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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY CHAPMAN,

Plaintiff,

vs.

ONIKA TANYA MARAJ p/k/a
NICKI MINAJ and DOES 1-10,

Defendants.

No. 2:18-cv-09088-VAP

Honorable Virginia A. Phillips

**APPLICATION OF PLAINTIFF
TRACY CHAPMAN FOR LEAVE TO
FILE UNDER SEAL; REDACTED
Exhibits**

Final Pretrial Conf.: October 5, 2020
Trial Date: October 13, 2020

[Concurrently filed with: 1. Declaration of
Nicholas Frontera; and 2. [Proposed] Order]

**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 26(c), Local Rule 79-5.2.2, and the Court's inherent authority over its own files and records, Plaintiff Tracy Chapman ("Plaintiff") applies for leave to file under seal the following documents attached in unredacted form to the concurrently filed Sealed Declaration of Nicholas Frontera in support:

1. Plaintiff's Motion for Partial Summary Judgment; Memorandum of Points and Authorities in support of Motion for Partial Summary Judgment, attached in redacted form hereto as **Exhibit A** and attached in unredacted form as **Exhibit A** to the Frontera Declaration in support of this Application for Leave to File Under Seal.
2. Plaintiff's Separate Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment, attached in redacted form hereto as **Exhibit B** and attached in unredacted form as **Exhibit B** to the Frontera Declaration in support of this Application for Leave to File Under Seal.
3. Pages 68:1-69:25 (App'x pp. 59-60) of the Excerpts of the Transcript of the Deposition of Onika Tanya Maraj, attached in redacted form hereto as **Exhibit C** as well as to the Declaration of Nicholas Frontera in Support of Plaintiff's Motion for Partial Summary Judgment as **Exhibit 6** and attached in unredacted form as **Exhibit C** to the Frontera Declaration in support of this Application for Leave to File Under Seal. **(Designating Party: Defendant Onika Tanya Maraj.)**
4. The August 3 - August 7, 2018 text messages between Onika Tanya Maraj and Nas, attached in redacted form hereto as **Exhibit D** as well as to the Declaration of Nicholas Frontera in Support of Plaintiff's Motion for Partial Summary Judgment as **Exhibit 17** and attached in unredacted form as **Exhibit D** to the Frontera Declaration in support of this Application for

1 Leave to File Under Seal. (**Designating Party: Defendant Onika Tanya**
 2 **Maraj.**)

3 5. Pages 100:24-104:35 (App'x pp. 160-63) and pages 132:1-133:25 (App'x
 4 pp. 164-65.) of the Excerpts of the Transcript of the deposition of Aston
 5 George Taylor, attached in redacted form hereto as **Exhibit E** as well as to
 6 the Declaration of Nicholas Frontera in Support of Plaintiff's Motion for
 7 Partial Summary Judgment as **Exhibit 16** and attached in unredacted form as
 8 **Exhibit E** to the Frontera Declaration in support of this Application for
 9 Leave to File Under Seal. (**Designating Party: Aston George**
 10 **Taylor/Defendant Onika Tanya Maraj.**)

11 6. The August 3 - August 11, 2018 Instagram direct messages between
 12 Defendant Onika Tanya Maraj and Aston George Taylor, attached in
 13 redacted form hereto as **Exhibit F** as well as to the Declaration of Nicholas
 14 Frontera in Support of Plaintiff's Motion for Partial Summary Judgment as
 15 **Exhibit 15** and attached in unredacted form as **Exhibit F** to the Frontera
 16 Declaration in support of this Application for Leave to File Under Seal.
 17 (**Designating Party: Aston George Taylor/Defendant Onika Tanya**
 18 **Maraj.**)

19 Although there is a strong presumption in favor of access to court documents,
 20 courts may seal documents if the party seeking to seal a judicial record
 21 demonstrates a "compelling reason." *In re Roman Catholic Archbishop of Portland*
 22 *in Oregon*, 661 F.3d 417, 429 (9th Cir. 2011). Plaintiff is seeking to file these
 23 documents under seal pursuant to United States District Court for the Central
 24 District of California Local Rule 79-5.2.2(b) because those documents were
 25 designated confidential by Defendant Onika Tanya Maraj ("Defendant") and Aston
 26 George Taylor ("Mr. Taylor") pursuant to a Protective Order in this action. (Dkt.
 27 No. 21.) A true and correct copy of the Protective Order is attached hereto as
 28 **Exhibit G**. Paragraph 12 of the Protective Order requires that Protected Materials,

1 including those marked “confidential” pursuant to the Protective Order, be filed
2 under seal absent written authorization from the Designating Party.

3 Pursuant to Local Rule 79-5.2.2(b), counsel for Plaintiff separately met and
4 conferred with counsel for Defendant and counsel for Taylor regarding the need to
5 file the documents and testimony at issue under seal.

6 With regard to the documents designated by Defendant, counsel exchanged
7 various emails and also met and conferred telephonically on August 14, 2020 to
8 attempt to eliminate the need to file under seal. After meeting and conferring, the
9 documents and testimony that Defendant has designated as confidential and
10 believes should be sealed consist of text messages between Defendant and Nas,
11 who featured on the work at issue in this Action. While Plaintiff does not believe
12 that these documents warrant sealing, in accordance with Local Rule 79-5.2.2(b),
13 Plaintiff will not file such documents publicly absent an order by this Court ruling
14 on this Application.

15 With regards to the documents at issue that were previously designated
16 confidential by Mr. Taylor, on August 14, 2020, counsel for Mr. Taylor agreed in
17 writing via email pursuant to Section 7.2 of the Protective Order that those
18 documents may be filed publicly. However, during meet and confer discussions
19 with counsel for Defendant, counsel for Defendant expressed that notwithstanding
20 the fact that Mr. Taylor gave written consent to publicly file the documents and
21 testimony he designated confidential, Defendant believes that certain of those
22 documents—documents reflecting “[Ms. Maraj’s] private communications with
23 [Mr. Taylor] and [Mr. Taylor’s] deposition testimony describing those
24 communications”—should nevertheless be filed under seal because they
25 “implicate[] [Ms. Maraj’s] privacy interests.” Plaintiff does not agree that the
26 Protective Order grants Defendant the right to insist that documents and testimony
27 produced by or obtained from a non-party be maintained confidential after the non-
28 party has agreed in writing that the documents may be publicly filed. Nor does

1 Plaintiff agree that such documents warrant sealing based on their contents.

2 However, in accordance with Local Rule 79-5.2.2(b), Plaintiff will not file such
3 documents publicly absent an order by this Court ruling on this Application.

4 Pursuant to Local Rule 79-5.2.2(b)(ii), in the event any portion of this
5 Application is denied, Plaintiff will file the applicable documents in their entirety
6 for public view and consideration by the Court.

7
8
9 Dated: August 17, 2020

Respectfully submitted,

10 MANATT, PHELPS & PHILLIPS, LLP
11 John M. Gatti
12 Lauren J. Fried
Nicholas Frontera

13 By: /s/ John M. Gatti

14 John M. Gatti
15 *Attorneys for Plaintiff*
16 TRACY CHAPMAN
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[REDACTED] EXHIBIT A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY CHAPMAN,

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vs.

ONIKA TANYA MARAJ p/k/a
NICKI MINAJ and DOES 1-10,

Defendants.

No. 2:18-cv-09088-VAP-SS

Honorable Virginia A. Phillips

**[REDACTED] NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: September 14, 2020
Hearing Time: 2:00 p.m.

Final Pretrial Conf.: October 5, 2020
Trial Date: October 13, 2020

[Concurrently filed with: 1. Separate
Statement; 2. Appendix of Evidence; and 3.
[Proposed] Order]

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 14, 2020 at 2:00 p.m., or
 3 as soon thereafter as this matter may be heard, in Courtroom No. 8A of the United
 4 States District Court for the Central District of California, located at 350 West 1st
 5 Street, Los Angeles, California 90012, Plaintiff Tracy Chapman (“Ms. Chapman”),
 6 by and through her undersigned attorneys, will and hereby does move under Rule 56
 7 of the Federal Rules of Civil Procedure for partial summary judgment in her favor as
 8 to liability for her cause of action for copyright infringement in her Complaint
 9 against Defendant Onika Tanya Maraj p/k/a Nicki Minaj (“Ms. Maraj”).

10 Ms. Chapman is entitled to partial summary judgment on her claim for
 11 copyright infringement liability because there are no genuine disputes as to any
 12 material facts with regard to Ms. Maraj’s actions. It is undisputed that beginning in
 13 June 2018, Ms. Maraj and her representatives and/or agents made multiple requests
 14 to license Ms. Chapman’s copyright in her well-known musical composition *Baby*
 15 *Can I Hold You* (the “Composition”) for use in Ms. Maraj’s recording (featuring
 16 Nas) *Sorry* (the “Infringing Work”), which Ms. Maraj created without Ms.
 17 Chapman’s consent for inclusion on Ms. Maraj’s then-forthcoming album, *Queen*
 18 (the “Album”).

19 Ms. Chapman, through her agents and representatives, repeatedly denied Ms.
 20 Maraj’s after-the-fact requests to use the Composition. Notwithstanding those
 21 denials, Ms. Maraj continued working on the Infringing Work and publicizing it on
 22 social media. Ultimately, while Ms. Maraj did not include the Infringing Work on
 23 the Album, she distributed the Infringing Work to a well-known disc jockey at the
 24 popular New York City radio station HOT 97, who promoted the Infringing Work
 25 on his social media accounts, stating that Ms. Maraj had given him something CONFIDENTIAL
 26 CONFIDENTIAL” that is CONFIDENTIAL”. The disc jockey then played the
 27 Infringing Work on HOT 97, and, possibly, through other outlets. None of Ms.
 28 Maraj’s actions relating to her liability are debatable. The facts are undisputed. Ms.

1 Maraj violated Ms. Chapman's copyright by creating an illegal derivative work and
 2 distributing that work. Moreover, these actions were indisputably willful. Ms.
 3 Maraj had knowledge of the illegality of her actions and proceeded. Thus, Ms.
 4 Chapman's copyright claim is appropriate for summary judgment.

5 This Motion is based on this Notice of Motion, the accompanying
 6 Memorandum of Points and Authorities, the concurrently filed Statement of
 7 Undisputed Material Facts and Conclusions of Law, the concurrently filed
 8 Declarations of Tracy Chapman and Nicholas Frontera, the concurrently lodged
 9 proposed Order, all other pleadings and papers on file in this action, and upon such
 10 argument and/ or evidence that the Court may consider at or before the hearing on
 11 this motion.

12 Pursuant to Local Rule 7-3, this Motion is made following the conference of
 13 counsel, which took place on July 29, 2020. Due to the global pandemic, the parties
 14 were unable to meet in-person, but did meet and confer telephonically. During the
 15 conference, counsel for the parties thoroughly discussed the substance of the
 16 arguments set forth herein, as well as potential resolution of the disagreements, in an
 17 attempt to eliminate the need for this Motion; the parties were unable to reach an
 18 agreement obviating the necessity for this motion.

19 Dated: August 17, 2020

Respectfully submitted,

20 MANATT, PHELPS & PHILLIPS, LLP
 21 John M. Gatti
 22 Lauren J. Fried
 23 Nicholas Frontera

By: /s/ John M. Gatti

John M. Gatti
Attorneys for Plaintiff
 TRACY CHAPMAN

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND	2
A. Plaintiff Tracy Chapman and the Composition	2
B. Defendant Onika Tanya Maraj and Infringing Work	3
C. Ms. Chapman Denies Ms. Maraj’s Various Requests for Authorization to Use the Composition in the Infringing Work.....	4
D. Ms. Maraj Continues to Create and Distributes the Infringing Work Despite the Denials	6
III. LEGAL STANDARD	10
IV. MS. MARAJ’S INFRINGING WILLFUL CONDUCT IS NOT DISPUTED AND IS THEREFORE SUBJECT TO SUMMARY JUDGMENT	10
A. Ms. Chapman Owns a Valid Copyright in the Composition.....	11
B. Ms. Maraj Willfully Created an Unauthorized Derivative Work	12
1. It is Undisputed That Ms. Maraj Created an Unauthorized Derivative Work, i.e., the Infringing Work	12
2. Ms. Maraj’s Actions in Creating an Unauthorized Derivative Work Were Willful As a Matter of Law	14
C. Ms. Maraj Willfully Distributed the Infringing Work.....	16
1. The Undisputed Facts Establish that Ms. Maraj Distributed the Infringing Work	16
2. The Undisputed Evidence Establishes that Ms. Maraj’s Distribution was Willful	19
V. CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

<i>A&M Records, Inc. v. Napster, Inc.</i> , 239 F.3d 1004 (9th Cir. 2001).....	11, 12
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	10
<i>Axiom Foods, Inc. v. Acerchem Int’l, Inc.</i> , 874 F.3d 1064 (9th Cir. 2017).....	14
<i>Basic Books, Inc. v. Kinko's Graphics Corp.</i> , 758 F. Supp. 1522 (S.D.N.Y. 1991).....	19
<i>Brave New Films 501(c)(4) v. Weiner</i> , 626 F.Supp.2d 1013 (N.D. Cal. 2009).....	16
<i>Broadcast Music, Inc. v. McDade & Sons, Inc.</i> , 928 F. Supp. 2d 1120 (D. Ariz. 2013).....	14, 15
<i>BWP Media USA, Inc. v. P3R, LLC</i> , 2014 WL 3191160 (C.D. Cal. Jul. 3, 2014)	19
<i>C.A.R. Transp. Brokerage Co., Inc. v. Darden Restaurants, Inc.</i> , 213 F.3d 474 (9th Cir. 2000).....	17
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	10
<i>Columbia Pictures Television v. Krypton Bd. of Birmingham, Inc.</i> , 106 F.3d 284 (9th Cir. 1997).....	19
<i>Edu. Testing Serv. v. Simon</i> , 95 F. Supp. 2d 1081 (C.D. Cal. 1999).....	11, 13
<i>Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.</i> , 499 U.S. 340 (1991)	11
<i>Fox Broad. Co., Inc. v. Dish Network L.L.C.</i> , 747 F.3d 1060 (9th Cir. 2013).....	12
<i>Fox Film Corp. v. Doyal</i> , 286 U.S. 123 (1932)	1
<i>Gilliam v. American Broadcasting Cos.</i> , 538 F.2d 14 (2nd Cir. 1976)	16

TABLE OF AUTHORITIES
(Continued)

	Page
<i>Gregory v. United States</i> , 178 F.3d 1294 (6th Cir. 1999).....	10
<i>Hearst Corp. v. Stark</i> , 639 F. Supp. 970 (N.D. Cal. 1986).....	14
<i>Holley v. Crank</i> , 400 F.3d 667 (9th Cir. 2004).....	16
<i>Marisa Christina, Inc. v. Bernard Chaus, Inc.</i> , 808 F. Supp. 356 (S.D.N.Y. 1992).....	11
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986)	10
<i>Miksad v. Dialog Info. Servs., Inc.</i> , 900 F.2d 263 (9th Cir. 1990).....	10
<i>Peer Int’l Corp. v. Pausa Records, Inc.</i> , 909 F.2d 1332 (9th Cir. 1990).....	14, 19
<i>Perfect 10, Inc. v. Giganews, Inc.</i> , 847 F.3d 657 (9th Cir. 2017).....	13
<i>Religious Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.</i> , 907 F. Supp. 1361 (N.D. Cal. 1995).....	13
<i>Rentmeester v. Nike, Inc.</i> , 883 F.3d 1111 (9th Cir. 2018).....	11
<i>S.O.S., Inc. v. Payday, Inc.</i> , 886 F.2d 1081 (9th Cir. 1989).....	11, 16
<i>Sega Enters. Ltd. v. MAPHIA</i> , 948 F. Supp. 923 (N.D. Cal. 1996).....	14
<i>Stewart v. Abend</i> , 495 U.S. 207 (1990)	1
<i>UMG Recordings, Inc. v. Disco Azteca Distributions, Inc.</i> , 446 F. Supp. 2d 1164 (E.D. Cal. 2006).....	11, 13
<i>Warner Bros. Entm’t Inc. v. Duhy</i> , No. CV 09-5798-GHK, 2009 WL 5177956 (C.D. Cal. Nov. 30, 2009).....	19
<i>Washington Shoe Co. v. A-Z Sporting Goods Inc.</i> , 704 F.3d 668 (9th Cir. 2012).....	14

TABLE OF AUTHORITIES
(Continued)

Page

STATUTES

17 U.S.C.A. § 504(c)(2).....	11
17 U.S.C. § 106.....	11, 12
17 U.S.C. §§ 106(1)-(3).....	12
17 U.S.C. § 106(3).....	16
17 U.S.C. § 410(c)	11
17 U.S.C. § 602(a)	12

OTHER AUTHORITIES

4 Melville B. Nimmer & David Nimmer, <u>Nimmer on Copyright</u> , § 13.08[C][1] (2016)	13
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RULES

Fed. R. Civ. P. 56.....	10
Fed. R. Civ. P. 56(a)	10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

It is the bedrock principle of Copyright Law that an author of an original work has the right to control how her work is exploited. “In fact, [the Supreme Court] has held that a copyright owner has the capacity arbitrarily to refuse to license one who seeks to exploit the work.” *Stewart v. Abend*, 495 U.S. 207, 229 (1990) (citing *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932)).

This case presents a prototypical example of copyright infringement through violation of this basic principle. Defendant Onika Tanya Maraj p/k/a Nicki Minaj (“Ms. Maraj”) sought a license to interpolate Plaintiff Tracy Chapman’s (“Ms. Chapman”) hit song *Baby Can I Hold You* (the “Composition”) in Ms. Maraj’s song *Sorry* (the “Infringing Work”) for her then-forthcoming album *Queen* (the “Album”). Ms. Chapman, who has a long-established and well-known practice of denying derivative uses of her works, clearly and unequivocally denied Ms. Maraj’s request for use multiple times. Unhappy with this result, the day after receiving the final denial from Ms. Chapman’s attorney, Ms. Maraj continued working on the Infringing Work and devised a plan to promote her Album by distributing the Infringing Work on the radio through a prominent New York disc jockey, Aston George Taylor p/k/a Funkmaster Flex (“Mr. Taylor”). Specifically, Ms. Maraj personally reached out to Mr. Taylor and asked him to play the Infringing Work on his popular radio show the same week her album, *Queen*, debuted, and, that she would text him the Infringing Work. Within 24 hours, Mr. Taylor received the Infringing Work, posted on social media that he had received the Infringing Work from Ms. Maraj, and, ultimately, played the Infringing Work on his radio show the night after Ms. Maraj’s album release. The Infringing Work went viral and was reposted all over the Internet, causing Ms. Chapman to incur significant expenses in connection with, among other things issuing takedown notices, and necessitating this lawsuit.

Each of these facts is indisputable based on the documentary evidence and testimony in the record. Ms. Maraj's actions constitute copyright infringement on multiple fronts and lack any legal justification.

Based on the foregoing, Ms. Chapman respectfully requests this Court grant her motion for partial summary judgment as to the issue of liability for copyright infringement, and enter a judgment in favor of Ms. Chapman, and against Ms. Maraj, concluding that: (1) Ms. Maraj infringed Ms. Chapman's Composition by creating the Infringing Work without permission, (2) Ms. Maraj's conduct was willful, (3) Ms. Maraj infringed Ms. Chapman's Composition by distributing the Infringing Work, and (4) Ms. Maraj's conduct was willful. Should the Court grant this Motion, and, respectfully, it should, the only remaining issue will be the amount of damages, including fees and costs, to which Ms. Chapman is entitled.

II. FACTUAL BACKGROUND

A. Plaintiff Tracy Chapman and the Composition

Ms. Chapman is an internationally known Grammy Award-winning singer, songwriter, and musician who first gained popularity in the late 1980s. Ms. Chapman's self-titled debut album, which she released in 1988, features such hits as the Composition and *Fast Car*. The Composition was a huge success, and reached the Top 50 on Billboard Magazine's Hot 100 chart. Ms. Chapman's debut album was a triumph, garnering Ms. Chapman a 1989 Grammy Award for Best Contemporary Folk Album and a nomination for Album of the Year. Ms. Chapman won two more Grammy Awards in 1989 for Best New Artist and for Best Female Pop Vocal Performance for *Fast Car*. Ms. Chapman's achievements continued throughout her career. During the 1990s and 2000s, Ms. Chapman received several more Grammy nominations, including for Best Rock Song for *Give Me One Reason*, which she won, and many other awards. At every turn, Ms. Chapman's music has been critically acclaimed and respected.

Ms. Chapman wrote the Composition in 1982, and obtained a copyright

1 registration for the work (and other musical compositions)—PAu000556755—from
 2 the United States Copyright Office on October 20, 1983. (Undisputed Fact (“UF”)
 3 1, 2, Declaration of Nicholas Frontera (“Frontera Decl.”), ¶ 5, Ex. 4; *id.* at ¶ 27, Ex.
 4 26; Declaration of Tracy Chapman (“Chapman Decl.”) at ¶ 2.)¹ Ms. Chapman later
 5 entered into a co-publishing agreement with, and granted a partial assignment of the
 6 copyright in the Composition to, SBK April Music, Inc. (“SBK”). (Chapman Decl.
 7 at ¶ 4.) SBK later obtained a copyright registration for the Composition--
 8 PA0000417830—on or about May 5, 1989, listing it and Purple Rabbit Music,
 9 Chapman’s publishing designee, as the copyright claimants. (Frontera Decl., ¶ 6,
 10 Ex. 5; Chapman Decl. at ¶ 3.) On May 15, 2016, SBK’s rights in the Composition
 11 transferred back to Ms. Chapman, making her the sole owner of the copyright in the
 12 Composition. (UF 3, Chapman Decl., ¶ 4, Ex. 1.)

13 **B. Defendant Onika Tanya Maraj and Infringing Work**

14 Ms. Maraj is a well-known rapper and hip hop recording artist. In 2017, Ms.
 15 Maraj began recording the Infringing Work. (UF 4 Frontera Decl., ¶ 7, Ex. 6
 16 (Deposition of Onika Tanya Maraj (“Maraj Dep.”) at 50:25-51:3.) The Infringing
 17 Work features fellow rapper and hip hop recording artist Nasir bin Olu Dara Jones
 18 p/k/a Nas (“Nas”). (UF 5, Frontera Decl., ¶ 7, Ex. 6 (Maraj Dep. at 50:25-51:3.))
 19 Ms. Maraj hoped to include the Infringing Work on her upcoming album *Queen*.
 20 (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19.) Ms. Maraj acknowledged that the
 21 Infringing Work was a “musical interpolation . . . that incorporated music and lyrics
 22 from the Composition.” (UF 6-8, Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶¶ 19, 20.)
 23 Specifically, Ms. Maraj admitted “that the Infringing Work uses a majority of the
 24 Composition’s lyrics.” (UF 7 Frontera Decl., ¶ 9, Ex. 8 at p. 81 (Suppl. Resp. to
 25 RFA No. 8); *id.* at ¶ 10, Ex. 9 (containing side by side comparison of the

26
 27 ¹ The Declaration of Tracy Chapman and the Declaration of Nicholas Frontera are
 28 attached to Plaintiff’s Appendix of Evidence in Support of Motion for Partial
 Summary Judgment. All references to page numbers are to the consecutively
 numbered pages of the Appendix. References to “UF” are to the undisputed facts
 contained in Plaintiff’s Separate Statement of Undisputed Facts.

1 Composition and the Infringing Work); *id.* at ¶ 9, Ex. 8 at p. 81 (Suppl. Resp. to
 2 RFA No. 10) (admitting lyrics were accurately listed in exhibit).) Because of this,
 3 Ms. Maraj “knew that [she] needed a License to use the Composition in the
 4 Infringing Work in order to include the Infringing Work on [her] album Queen.”
 5 (UF 9, Frontera Decl., ¶ 9, Ex. 8 at p. 80 (Suppl. Resp. to RFA No. 5).) Despite
 6 this, Ms. Maraj began recording the Infringing Work, which interpolates the
 7 Composition, without first seeking Ms. Chapman’s authorization to do so.
 8 (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20.)

9 C. **Ms. Chapman Denies Ms. Maraj’s Various Requests for**
 10 **Authorization to Use the Composition in the Infringing Work**

11 On May 23, 2018, Joshua Berkman (“Mr. Berkman”), a representative from
 12 Ms. Maraj’s record label, Republic Records, e-mailed Deborah Mannis-Gardner
 13 (“Ms. Mannis-Gardner”) of DMG Clearances, Inc., the number one clearance
 14 company in the world, to request that she obtain a clearance to use the Composition
 15 in the Infringing Work. (UF 11, Frontera Decl., ¶ 11, Ex. 10 at p. 99 ; *id.* at ¶ 12,
 16 Ex. 11 (Deposition of Deborah Mannis-Gardner (“Mannis-Gardner Dep.”) at
 17 107:11-108:8, 132:11-108:8, 133:9-14.)) Shortly thereafter, Ms. Mannis-Gardner
 18 notified Mr. Berkman that “if [the requested clearance song] is shelly thunder/foxy
 19 brown (sic) reggae version of Sorry written by Tracy Chapman then its (sic) not
 20 available for sampling.” (UF 12, Frontera Decl., ¶ 11, Ex. 10 at p. 99; *id.* at ¶ 12,
 21 Ex. 11 (Mannis-Gardner Dep. at 110:10-110:14.)) Indeed, Ms. Mannis-Gardner
 22 knew that Ms. Chapman was on the “do not sample list”—an unwritten list of
 23 artists that are well-known in the music industry for not allowing samples of their
 24 works. (Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at 111:9-23, 115:14-
 25 116:4.)) Ms. Mannis-Gardner knew this based on her more than 30 years of
 26 industry and clearance experience. (*Id.*; *see also id.* at 132:11-108:8, 133:9-14,
 27 134:21-135-3.)

28 Despite Ms. Mannis-Gardner notifying Mr. Berkman that Ms. Chapman did

1 not allow for sampling, Mr. Berkman instructed Ms. Mannis-Gardner to attempt to
 2 clear the Infringing Work anyway. (UF 13, Frontera Decl., ¶ 13, Ex. 12; *id.* at ¶ 12,
 3 Ex. 11 (Mannis-Gardner Dep. at 112:19-114:3.)) Accordingly, on June 26, 2018,
 4 Ms. Mannis-Gardner contacted Gelfand, Rennert & Feldman, LLP (“Gelfand”), Ms.
 5 Chapman’s business managers, to attempt to clear the Infringing Work. (Chapman
 6 Decl. at ¶ 5, Ex. 2 at p. 27; Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at
 7 117:2-119:17, 120:20-121:12.)) In her request, Ms. Mannis-Gardner stated that
 8 “[w]hen . . . Tracy Chapman was with Sony/ATV her material was always denied”,
 9 and asked “[i]s she still on the do not sample or interpolate list? I have an A LIST
 10 artist who wants to use the song Sorry.” (Chapman Decl. at ¶ 5, Ex. 2 at p. 27.)

11 After a lengthy exchange, Ms. Mannis-Gardner submitted an official request
 12 for approval to license the Composition for use in the Infringing Work. (Chapman
 13 Decl. at ¶ 5, Ex. 2 at p. 26; Frontera Decl., ¶ 14, Ex. 13; *id.* at ¶ 12, Ex. 11 (Mannis-
 14 Gardner Dep. at 122:5-15.)) That request was passed along to Ms. Chapman, who
 15 instructed Gelfand to deny it. (UF 14, Chapman Decl. at ¶ 5.) As a result, on July
 16 16, 2018, a Gelfand representative e-mailed Ms. Mannis-Gardner unequivocally
 17 stating that “the request has not been approved.” (Chapman Decl. at ¶ 5, Ex. 2 at p.
 18 25.) That same day, Ms. Mannis-Gardner forwarded the denial to Mr. Berkman.
 19 (UF 15, *Id.*; Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at 123:22-124:22.))

20 In spite of this denial, Ms. Maraj and her representatives continued to create
 21 the Infringing Work, including its interpolation of the Composition, and seek
 22 clearance from Ms. Chapman. On July 18, 2018, Mr. Berkman e-mailed Ms.
 23 Mannis-Gardner asking if they could “figure out a way to get to [Ms. Chapman]
 24 direct” to clear the song. (UF 16, Frontera Decl., ¶ 15, Ex. 14; *id.* at ¶ 12, Ex. 11
 25 (Mannis-Gardner Dep. at 126:7-131:18.)) Ms. Mannis-Gardner reiterated: “Tracy
 26 doesn’t approve samples or interpolations and the songs out there are not with
 27 consent. I am unfamiliar with Tracy’s Mmgt or legal counsel. Im (sic) sorry.” (*Id.*)

28 Nevertheless, Ms. Maraj and her representatives persisted. On July 27, 2018,

1 Gee Roberson, Ms. Maraj's personal manager, contacted Todd Gelfand of Gelfand
 2 requesting that he connect Ms. Chapman with Ms. Maraj to discuss an "idea [of Ms.
 3 Maraj's] that is one of the most personal for her that was inspired by [Ms.
 4 Chapman's] art that [Ms. Maraj] would like the opportunity to touchbase (sic) with
 5 [Ms. Chapman] about." (UF 16, Chapman Decl., ¶ 6, Ex. 3 at pp. 31-32; Frontera
 6 Decl. at ¶ 4.)

7 Days after Mr. Roberson's email, on August 1, 2018, Ms. Maraj personally
 8 attempted to reach Ms. Chapman through Twitter, tweeting out to her more than 10
 9 million followers: "Tracy Chapman, can you please hit me . . . omg for the love of
 10 #Queen." (UF 17, Frontera Decl., ¶ 9, Ex. 8 at p. 83 (Suppl. Resp. to RFA No.
 11 18).)

12 After being made aware of the fact that Ms. Maraj's representatives had once
 13 again sought her clearance approval despite her previous denial, Ms. Chapman
 14 instructed her attorney to inform Mr. Roberson that the use was denied. (UF 18, 19,
 15 Chapman Decl. at ¶ 6.) On August 2, 2018, Ms. Chapman's attorney wrote:

16 I have spoken to Ms. Chapman and while she appreciates the positive
 17 feelings of your client, you should know that she carefully protects her
 18 copyrights and in the normal course of business does not approve
 19 these kinds of requests. We hope that with this confirmation, your
 20 client will move on with the project without the requested sample.
 Thank you and your client for understanding.

21 (UF 20, Chapman Decl., ¶ 6, Ex. 3 at p. 31.) Mr. Roberson confirmed that he had
 22 been "made aware of the denied use via our email on Aug 2nd and the album is in
 23 stores without the requested sample." (Frontera Decl., ¶ 26, Ex. 25 at p. 222.)

24 **D. Ms. Maraj Continues to Create and Distributes the Infringing
 Work Despite the Denials**

25 In the face of Ms. Chapman's repeated denials of authorization to use the
 26 Composition in the Infringing Work, Ms. Maraj developed a plan to release it to the
 27 public. On August 3, 2018, Ms. Maraj, from her verified Instagram account, sent a
 28 private direct message to Mr. Taylor, a popular New York disc jockey for hit radio

1 station Hot 97 FM, confirming that she would not be releasing the Infringing Work
 2 on the Album, but asking him to premiere the Infringing Work on his radio show.
 3 Ms. Maraj wrote:

4 **CONFIDENTIAL**

5
 6
 7 (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147 (emphasis added); *id.* at ¶ 17, Ex. 16
 8 (Deposition of Aston George Taylor (“Taylor Dep.”) at 159:7-162:18.)) In
 9 response, the same day, Mr. Taylor stated, “I will make a movie!!!!” (UF 26,
 10 Frontera Decl., ¶ 16, Ex. 15 at p. 147.) Mr. Taylor admitted his response meant he
 11 would play the song, say he liked it, and make it exciting. (UF 26, Frontera Decl., ¶
 12 17, Ex. 16 (“Taylor Dep.”) at 162:25-163:7.)

13 Having confirmed that Mr. Taylor would premiere the Infringing Work the
 14 week her Album released, Ms. Maraj continued to finalize the Infringing Work with
 15 Nas. The same day Ms. Maraj coordinated the release of the Infringing Work with
 16 Mr. Taylor, she texted Nas: **CONFIDENTIAL**”

17 (Frontera Decl., ¶ 18, Ex. 17 at p. 182; *id.* at ¶ 7, Ex. 6 (Maraj Dep. at 55:5-24;
 18 56:15-19.)) After some additional discussion, Ms. Maraj sent Nas a link to
 19 download the **CONFIDENTIAL** of the Infringing Work. (UF 22, Frontera Decl., ¶ 18,
 20 Ex. 17 at p. 182; *id.* at ¶ 7, Ex. 6 (Maraj Dep. at 56:10-24.)) Ms. Maraj and Nas
 21 then exchanged a number of texts discussing changes to the verses of the Infringing
 22 Work, which still included the Composition. (Frontera Decl., ¶ 18, Ex. 17 at p.
 23 184-85.) Ms. Maraj told Nas: **CONFIDENTIAL**

24 **CONFIDENTIAL** (*Id.*)

25 On August 5, 2020, Ms. Maraj informed Nas that the Infringing Work was
 26 **CONFIDENTIAL** (UF 23, Frontera Decl., ¶ 18, Ex. 17 at p. 186; *id.* at ¶ 7,
 27 Ex. 6 (Maraj Dep. at 59:12-60:2.)) On August 7, 2018, Nas asked Ms. Maraj if she
 28 was **CONFIDENTIAL** (Frontera Decl., ¶

1 18, Ex. 17 at p. 187.) Ms. Maraj responded, CONFIDENTIAL

2 CONFIDENTIAL
 3 CONFIDENTIAL (UF 24, *Id.*) Nas responded, CONFIDENTIAL

4 (*Id.*)

5 On August 10, 2018, Ms. Maraj released the Album without the Infringing
 6 Work. (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19.) The same day she released the
 7 Album, Ms. Maraj followed up with Mr. Taylor via direct message on August 10,
 8 2018 stating: CONFIDENTIAL

9 (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Mr. Taylor then provided his phone
 10 number and stated, CONFIDENTIAL

11 (UF 28, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Ms. Maraj confirmed, CONFIDENTIAL
 12 CONFIDENTIAL (UF 29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)

13 That same day, Ms. Maraj’s lead recording engineer, Aubry Delaine (“Mr.
 14 Delaine”) texted David Castro at Chris Athens Masters, Inc. (“Chris Athens”), the
 15 company that mastered Ms. Maraj’s songs for the Album. (UF 30, Frontera Decl. ¶
 16 28, at Ex. 27.) Mr. Delaine informed Mr. Castro that he would send a version of the
 17 Infringing Work and asked that Chris Athens master the song and return both clean
 18 and explicit versions. (Frontera Decl. ¶ 19, Ex. 27.) Chris Athens mastered the
 19 Infringing Work and sent Mr. Delaine links to download both a clean and an
 20 explicit version of the Infringing Work the same day. (UF 30, 31, 32, Frontera
 21 Decl., ¶ 19, Ex. 18 pp. ; *id.* at ¶ 20, Ex. 19 (Deposition of Aubry Delaine (“Delaine
 22 Dep.”) at 206:16-208:4.)) The links only allowed for one download each. (UF 33,
 23 Frontera Decl., ¶ 19, Ex. 18 pp.; *id.* at ¶ 20, Ex. 19 (Delaine Dep. at 206:16-
 24 208:4.)) Mr. Delaine testified that he never “sen[t] out any [unreleased] recordings
 25 of Ms. Maraj’s to a third party without [] receiving an instruction from Ms. Maraj to
 26 send out that recording[.]” (UF 34, Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at
 27 203:16-23.))

28 On August 11, 2018, Mr. Taylor posted on his Instagram and Twitter

1 accounts promoting the debut of the Infringing Work on his show that night:

- 2 • “Shhhhhhhh!!!! TONIGHT 7PM!!! NICKY GAVE ME
3 SOMETHING!!! @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
4 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!” (UF 35, Frontera
5 Decl., ¶ 21, Ex. 20; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 167:18-168:23).)
- 6 • “Shhhhhhhh!!!! TONIGHT 7PM!!! NICKI GAVE ME
7 SOMETHING!!! @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
8 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!” (UF 35, Frontera
9 Decl., ¶ 22, Ex. 21; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 170:1-171:12).)

10 Mr. Taylor received the Infringing Work via text sometime between (i)
11 August 10, 2018 when Ms. Maraj told him she would text it to him and (ii) his first
12 social media post promoting the show early afternoon the next day. (UF 36,
13 Frontera Decl., ¶ 17, Ex. 16, (Taylor Dep. at 164:22-165:14; *id.* at 169:5-18; *id.* at
14 158:11-22 (confirming that he received the Infringing Work via text.)) The name
15 of the file that Mr. Taylor received, “01 Sorry - 72518 - master.mp3” indicates that
16 he received a mastered version of the Infringing Work. (UF 37, Frontera Decl., ¶
17 23, Ex. 22 (Mr. Taylor emailing the file to one of his interns, DJ Heavy rotation);
id. at ¶ 17, Ex. 16, (Taylor Dep. at 172:25, 174:22-176:21.))

18 On August 11, 2018 at 7 PM EST, Mr. Taylor broadcast his radio show on
19 Hot 97 FM. (UF 38, Frontera Decl., ¶ 17, Ex. 16, (Taylor Dep. at 166:9-13,
20 173:17-23.)) Mr. Taylor played the Infringing Work during the broadcast. (UF 39,
21 *Id.*) Hot 97 also subsequently posted the broadcast on its website. (Frontera Decl.,
22 ¶ 24, Ex. 23.) Additionally, Hot 97 posted a link on its Instagram to listen to the
23 Infringing Work with a caption stating “If you missed it...hear it again”. (Frontera
24 Decl., ¶ 25, Ex. 24.)

25 In the following months, numerous copies of the Infringing Work were
26 posted on the Internet. (Frontera Decl., ¶ 29.) As a result, Ms. Chapman was
27 forced to incur significant expenses monitoring these improper postings and issuing
28 DMCA takedown notices. (*Id.*) To this day, copies of the Infringing Work remain

1 on the Internet despite various efforts by Ms. Chapman to have them taken down.
2 (*Id.*)

3 **III. LEGAL STANDARD**

4 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary
5 judgment is proper where “there is no genuine dispute as to any material fact and the
6 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex*
7 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “Where the record taken as a whole
8 could not lead a rational trier of fact to find for the nonmoving party, there is no
9 ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
10 U.S. 574, 586-87 (1986) (citations omitted). Put differently, “[t]he district court
11 should grant summary judgment where the only reasonable conclusion to be drawn
12 from the record supports the moving party.” *Gregory v. United States*, 178 F.3d
13 1294 (6th Cir. 1999); *Miksad v. Dialog Info. Servs., Inc.*, 900 F.2d 263 (9th Cir.
14 1990). Once the moving party has met this standard, the burden shifts to the party
15 opposing summary judgment to demonstrate a genuine issue for trial. *Anderson v.*
16 *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The opposing party must do so with
17 specific facts. *Matsushita*, 475 U.S. at 586.

18 **IV. MS. MARAJ’S INFRINGING WILLFUL CONDUCT IS NOT** 19 **DISPUTED AND IS THEREFORE SUBJECT TO SUMMARY** 20 **JUDGMENT**

21 Ms. Chapman seeks partial summary judgment as to Ms. Maraj’s liability for
22 copyright infringement. Ms. Maraj committed copyright infringement when she
23 created a derivative work (*i.e.*, the Infringing Work) without authorization and
24 when she distributed it. Moreover, Ms. Maraj’s actions as to both creation and
25 distribution were willful.

26 Ms. Chapman is entitled to summary adjudication on the issue of liability for
27 copyright infringement because Ms. Maraj does not contest her use of the
28 Composition in the Infringing Work and the undisputed facts establish that Ms.
Maraj or one of her agents acting at her direction distributed the Infringing Work.

(See, *supra*, §§ II.B, II.D.) Further, the Court should summarily adjudicate the fact that Ms. Maraj’s infringement “was committed willfully” within the meaning of 17 U.S.C.A. § 504(c)(2) because Ms. Maraj knew she needed clearance, was affirmatively denied clearance numerous times, yet acted anyway. This is the very definition of willful conduct.

To establish copyright infringement, a plaintiff must demonstrate: (1) that she owns a valid copyright; and (2) that defendant copied protected aspects of the work. *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1116-17 (9th Cir. 2018) (citing *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, (1991)). “The word ‘copying’ is shorthand for the infringing of any of the copyright owner’s five exclusive rights” under 17 U.S.C. § 106. See *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001) (quoting *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 n.3 (9th Cir. 1989)). These exclusive rights include the right to reproduce, distribute, publicly display, perform, or create derivative works of the copyrighted work. 17 U.S.C. § 106.

A plaintiff need not demonstrate the defendant’s intent to infringe the copyright in order to demonstrate copyright infringement. *UMG Recordings, Inc. v. Disco Azteca Distribs., Inc.*, 446 F. Supp. 2d 1164, 1172 (E.D. Cal. 2006); see also *Edu. Testing Serv. v. Simon*, 95 F. Supp. 2d 1081, 1087 (C.D. Cal. 1999) (copyright infringement “is a strict liability tort”).

Here, Ms. Chapman is able to meet her burden.

A. Ms. Chapman Owns a Valid Copyright in the Composition

A certificate of registration validly obtained from the Copyright Office within five years of first publication of a work constitutes *prima facie* evidence of the originality of the work and of the facts stated therein, including ownership. See 17 U.S.C. § 410(c). In this case, Ms. Chapman is entitled to this statutory presumption because she registered her copyright of the song with the Copyright Office within five years of publication. *Marisa Christina, Inc. v. Bernard Chaus, Inc.*, 808 F.

1 Supp. 356, 357 (S.D.N.Y. 1992).

2 It is undisputed that Ms. Chapman has always maintained rights to the
3 Composition. (UF 1-3.) Ms. Chapman wrote the Composition in 1982, and
4 obtained a copyright registration for the work (and other musical compositions) –
5 PAu000556755 – from the United States Copyright Office on October 20, 1983.
6 (UF 1-2, Frontera Decl., ¶ 6, Ex. 5; Chapman Decl. ¶ 2.) Although Ms. Chapman
7 entered into a co-publishing agreement with SBK through which SBK obtained a
8 partial assignment of the copyright in the Composition, SBK’s rights in the
9 Composition transferred back to Ms. Chapman, on May 15, 2016. (Chapman Decl.,
10 ¶ 4, Ex. 1.) Accordingly, Ms. Chapman is the sole owner of the copyright in the
11 Composition. (UF 3, Chapman Decl., ¶ 4, Ex. 1.)

12 Ms. Maraj does not—and cannot—dispute Ms. Chapman’s ownership.
13 Therefore, Ms. Chapman is entitled to summary adjudication as to ownership.

14 **B. Ms. Maraj Willfully Created an Unauthorized Derivative Work**

15 The Copyright Act bestows on the owner of a copyright certain exclusive
16 rights, including the right to create and regulate derivative works. 17 U.S.C. §§
17 106(1)-(3), 17 U.S.C. § 602(a). Ms. Maraj violated this exclusive right by creating
18 a derivative work of Ms. Chapman’s copyrighted work without authorization.
19 Moreover, Ms. Maraj’s violation was willful under the law.

20 1. It is Undisputed That Ms. Maraj Created an Unauthorized
21 Derivative Work, i.e., the Infringing Work

22 To prove direct copyright infringement, a plaintiff must demonstrate both
23 ownership and “that the alleged infringers violated at least one exclusive right
24 granted to copyright holders under 17 U.S.C. § 106.” *A&M Records, Inc.*, 239 F.3d
25 at 1013. In addition, direct infringement requires the plaintiff to show causation, or
26 “volitional conduct”, by the defendant. *See Fox Broad. Co., Inc. v. Dish Network*
27 *L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2013). The word “volition” in this context
28 does not mean an “act of willing or choosing” or an “act of deciding,” but rather

1 “simply stands for the unremarkable proposition that proximate causation
 2 historically underlines copyright infringement liability no less than other torts.”
 3 *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017) (quoting
 4 *Religious Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.*, 907 F. Supp. 1361,
 5 1370 (N.D. Cal. 1995)); *see also* 4 Melville B. Nimmer & David Nimmer, Nimmer
 6 on Copyright, § 13.08[C][1] (2016).

7 Here, it is undisputed that Ms. Maraj created an unauthorized derivative work
 8 of the Composition when she created the Infringing Work. Indeed, Ms. Maraj
 9 *admitted* in her responses to Ms. Chapman’s requests for admissions (“RFA
 10 Responses”) and deposition that the Infringing Work uses a majority of the
 11 Composition’s lyrics and its vocal melody. (UF 6-8, Frontera Decl., ¶ 9, Ex. 8 at p.
 12 81 (Suppl. Resp. to RFA No. 8) (“Admit that the Infringing Work uses a majority of
 13 the Composition’s lyrics.” “...ADMIT.”).) In other words, Ms. Maraj *admits* that
 14 she created a derivative work of the Composition that is substantially similar, if not
 15 strikingly similar, to the original. (UF 6-8, Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶¶ 19,
 16 20 (admitting that the Infringing Work was a “musical interpolation . . . that
 17 incorporated music and lyrics from the Composition”).) Ms. Maraj further
 18 admitted in her RFA Responses that she began recording the Infringing Work
 19 *before* requesting a license from Ms. Chapman for use of the Composition. (UF 10,
 20 Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20.) These facts are undisputed. This is
 21 copyright infringement.

22 Based on prior discussions, Ms. Chapman anticipates that Ms. Maraj may
 23 argue that although she created an unauthorized derivative work when she created
 24 the Infringing Work, such creation (and infringement) was innocent. But Ms.
 25 Maraj’s position is a red herring; intent is irrelevant to the issue of copyright
 26 infringement. *UMG Recordings, Inc.*, 446 F. Supp. 2d at 1172; *Educ. Testing Serv.*,
 27 95 F. Supp. 2d at 1087 (copyright infringement “is a strict liability tort”). Ms.
 28 Maraj’s actions speak for themselves. She directly infringed on Ms. Chapman’s

1 Composition. For this reason, Ms. Chapman is entitled to summary adjudication on
 2 copyright infringement based on Ms. Maraj's creation of an unauthorized derivative
 3 work.

4 2. Ms. Maraj's Actions in Creating an Unauthorized Derivative
 5 Work Were Willful As a Matter of Law

6 To prove willfulness, "the plaintiff must show (1) that the defendant was
 7 actually aware of the infringing activity, or (2) that the defendant's actions were the
 8 result of 'reckless disregard' for, or 'willful blindness' to, the copyright holder's
 9 rights." *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 674 (9th
 10 Cir. 2012), *abrogated on other grounds by Axiom Foods, Inc. v. Acerchem Int'l,*
 11 *Inc.*, 874 F.3d 1064, 1067 (9th Cir. 2017). The determination of willfulness is
 12 ordinarily a question of fact for the jury. *Hearst Corp. v. Stark*, 639 F. Supp. 970,
 13 980 (N.D. Cal. Jun. 30, 1986). However, where the relevant facts are admitted or
 14 otherwise undisputed, willfulness can be appropriately resolved on summary
 15 judgment. *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1335-36 (9th Cir.
 16 1990); *Sega Enters. Ltd. v. MAPHIA*, 948 F. Supp. 923, 936 (N.D. Cal. 1996).

17 Ms. Maraj's actions are exactly the type of willful infringement that can be
 18 decided on summary judgment. By definition "[i]nfringement is willful if a record
 19 reflects that a defendant was warned they needed a license or permission but
 20 declined to do so and went ahead anyway." *Broadcast Music, Inc. v. McDade &*
 21 *Sons, Inc.*, 928 F. Supp. 2d 1120, 1134 (D. Ariz. Mar. 6, 2013); *Sega Enters. Ltd.*,
 22 948 F.Supp. at 936 (granting summary judgment as to willfulness and finding that
 23 there were knowing actions of infringement). Under these conditions, it is
 24 appropriate to conclude that Ms. Maraj willfully infringed Ms. Chapman's
 25 copyright.

26 Here, the undisputed facts illustrate that Ms. Maraj's copyright infringement
 27 was willful. *First*, Ms. Maraj admitted in her RFA Responses and deposition that
 28 her copying of the Composition was unauthorized, conceding that she (i) recorded

1 the Infringing Work before requesting a license from Ms. Chapman (UF 6-8,
 2 Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20); (ii) intended to include the Infringing Work
 3 on the Album (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19); and (iii) knew she needed a
 4 license to use the Composition in the Infringing Work in order to include the
 5 Infringing Work on the Album (UF 9, Frontera Decl., ¶ 9, Ex. 8 at p. 80 (Suppl.
 6 Resp. to RFA No. 5).) Ms. Maraj's actions in the face of her knowledge that she
 7 needed a license is precisely the type of willful conduct contemplated by *Broadcast*
 8 *Music, Inc.*, 928 F. Supp. 2d at 1134.

9 *Second*, it also is undisputed that Ms. Maraj never received the requested –
 10 and required – permission to use the Composition from Ms. Chapman. Instead, Ms.
 11 Maraj and her representatives were ***unequivocally informed*** that the Composition
 12 was not available for sampling on multiple occasions, and that Ms. Chapman was
 13 not granting the requested permission. (*See, supra*, § II.C; *see also* UF 12, 14-15,
 14 19, Frontera Decl., ¶ 11, Ex. 10 at p. 99; *id.* at ¶ 12, Ex. 11 (Mannis-Gardner Dep. at
 15 111:9-24); *id.* at ¶ 15, Ex. 14; Chapman Decl., ¶ 6, Ex. 3.) Ms. Maraj's creation of
 16 the Infringing Work without Ms. Chapman's permission despite acknowledging that
 17 she knew she needed Ms. Chapman's authorization establishes willful infringement.
 18 *See Broadcast Music, Inc.*, 928 F. Supp. 2d at 1134.

19 *Third*, to the extent that Ms. Maraj argues that she did not willfully infringe
 20 Ms. Chapman's copyright because she allegedly created the Infringing Work *for the*
 21 *purpose of* obtaining permission from Ms. Chapman to use it on her Album, that
 22 argument is unsupported by the facts or law. Indeed, the fact that Ms. Maraj and
 23 Nas continued working on the Infringing Work *after* Ms. Maraj knew that Ms.
 24 Chapman had not cleared—and would not clear—the license request and Ms. Maraj
 25 confirmed to Mr. Taylor that she would not be using the Infringing Work on her
 26 Album demonstrates that Ms. Maraj's post-hoc justification for the reason she
 27 created the Infringing Work (*i.e.*, to obtain Ms. Chapman's permission to use the
 28 Composition) is unsupportable. (*See, supra*, § II.D; *see also* Frontera Decl., ¶ 18,

Ex. 17; *id.* at ¶ 16, Ex. 15 at p. 147.) Further, not only did Ms. Maraj continue working on the Infringing Work after her requests to license the Composition were denied, but she went a step further by asking Mr. Taylor to premiere the Infringing Work on the radio the week her Album was released to the public. (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147.)

Given these undisputed facts, no reasonable juror could conclude that Ms. Maraj did not act willfully. Therefore, summary judgment is appropriate as to Ms. Maraj's willfulness in creating the unauthorized derivative work using the Composition.

C. Ms. Maraj Willfully Distributed the Infringing Work

In addition to violating Ms. Chapman's copyright by creating an infringing derivative work, Ms. Maraj committed a second act of infringement by willfully distributing the Infringing Work.

1. The Undisputed Facts Establish that Ms. Maraj Distributed the Infringing Work

As discussed above, 17 U.S.C. § 106(3) grants a copyright holder the exclusive right to distribute its copyrighted work. Ms. Chapman is the undisputed copyright holder. (UF 1-3.) A common method of distribution is through licensing agreements, which permit the copyright holder to place restrictions upon the distribution of its products. "A licensee infringes the owner's copyright if its use exceeds the scope of its license." *S.O.S., Inc.*, 886 F.2d at 1087 (*citing Gilliam v. American Broadcasting Cos.*, 538 F.2d 14, 20 (2nd Cir. 1976)).

Moreover, even if Ms. Maraj did not distribute the Infringing Work herself, she is still liable for distribution and considered the distributor if the distribution happened at her direction. The law is clear, "[a]n agent acting within his apparent or ostensible authority binds the principal where the principal has intentionally or negligently allowed others to believe the agent has authority." *Brave New Films 501(c)(4) v. Weiner*, 626 F.Supp.2d 1013, 1016 (N.D. Cal. 2009); see also *Holley v.*

1 *Crank*, 400 F.3d 667, 673 (9th Cir. 2004) (“Principals are liable for the torts of their
 2 agents committed within the scope of their agency.”). Further, the existence of
 3 agency may be decided on summary judgment when there is only one conclusion
 4 that may be drawn. *C.A.R. Transp. Brokerage Co., Inc. v. Darden Restaurants,*
 5 *Inc.*, 213 F.3d 474, 481 (9th. Cir. 2000) (affirming grant of summary judgment on
 6 agency).

7 Here, the undisputed evidence demonstrates that Ms. Maraj distributed the
 8 Infringing Work without a license or other form of consent. After being told on
 9 numerous occasions she did not have permission to use the Composition in the
 10 Infringing Work, Ms. Maraj distributed the track anyway. (*See, supra*, § II.D; *see*
 11 *also* UF 12, 14, 19, 25-36, Frontera Decl., ¶ 11, Ex. 10; *id.* at ¶ 12, Ex. 11 (Mannis-
 12 Gardner Dep. at 111:9-24); *id.* at ¶ 15, Ex. 14; Chapman Decl., ¶ 6, Ex. 3.) Just a
 13 week before her Album was set to release, Ms. Maraj privately messaged Mr.
 14 Taylor:

15 **CONFIDENTIAL**

16
 17
 18 (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147 (emphasis added).) Mr. Taylor
 19 responded indicating that he would play the track. (Uf 26, Frontera Decl., ¶ 16, Ex.
 20 15 at p. 147; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 162:25-163:7).)

21 Ms. Maraj followed up with Mr. Taylor several days later (the day her Album
 22 released) telling him that the track featured her and Nas, *i.e.* the Infringing Work,
 23 and asking him for his number so she could send it over for Mr. Taylor to publicly
 24 broadcast. (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)² Mr. Taylor provided
 25 his number and Ms. Maraj confirmed she would text the Infringing Work to him.
 26 (UF 28, 29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)

27
 28 ² No other track that Maraj was working on for the Album featured Nas. (Delaine
 Dep. at 205:8-12.)

1 On August 11, 2018, Mr. Taylor posted to his Instagram and Twitter
 2 accounts promoting the Infringing Work and confirming he received it from Ms.
 3 Maraj:

- 4 • “Shhhhhhhh!!!! TONIGHT 7PM!!! **NICKY GAVE ME**
 5 **SOMETHING!!!** @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
 6 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!” (UF 35, Frontera
 7 Decl., ¶ 21, Ex. 20; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 167:18-168:23.)
 8 (emphasis added).)

9 Then, the same day at 7 PM EST, Mr. Taylor broadcast his radio show on Hot 97
 10 FM and played the Infringing Work. (UF 38, 39, Frontera Decl., ¶ 17, Ex. 16
 11 (Taylor Dep. at 166:9-13).)

12 The chain of distribution is clear:

- 13 • Ms. Maraj asked Mr. Taylor to premiere the Infringing Work the week
 14 her Album released (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147);
- 15 • Ms. Maraj confirmed with Mr. Taylor the day her album released that
 16 Mr. Taylor was going to play the Infringing Work on his show (UF 27,
 17 *id.*);
- 18 • Ms. Maraj asked Taylor for his number to send the Infringing Work to
 19 him (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148);
- 20 • Ms. Maraj’s recording engineer requested that the Infringing Work be
 21 mastered and a “clean” version be sent back to him (UF 30, Frontera
 22 Decl. Frontera Decl., ¶ 28, at Ex. 27);
- 23 • Chris Athens sent Mr. Delaine a clean version that day (UF 32,
 24 Frontera Decl., ¶ 19, Ex. 18 at pp. 189-90; Frontera Decl., ¶ 20, Ex. 19
 25 (Delaine Dep. at 206:16-208:4)); and
- 26 • Between the time of Mr. Taylor’s and Ms. Maraj’s last message and
 27 the next afternoon, Mr. Taylor received the Infringing Work via text
 28 (UF 36, Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at 164:22-165:8; *id.*,

at 169:5-18; *id.* at 158:11-22).)

Each of these facts is indisputable based on the documentary evidence. And from these facts, the only reasonable conclusion is that Ms. Maraj or someone acting at her direction distributed the Infringing Work to Mr. Taylor. Indeed, Ms. Maraj's recording engineer confirmed that unreleased recordings such as the Infringing Work are maintained in the strictest confidence and that he *never* sends any unreleased recordings out to anyone without instructions from Ms. Maraj directly. (UF 34, Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at 200:23-202:6, 203:16-23; *id.* at 204:17-21).)

Thus, the only possible conclusion based on the undisputed facts and evidence adduced in discovery is that Ms. Maraj, or someone acting at her direction, distributed the Infringing Work to Mr. Taylor for public consumption.

2. The Undisputed Evidence Establishes that Ms. Maraj's Distribution was Willful

Ms. Maraj's conduct with regard to distribution exemplifies the type of willful conduct appropriately decided on summary judgment. The law is clear. When an individual knows their conduct infringes on another's copyright and acts, that conduct is willful. *Columbia Pictures Television v. Krypton Bd. of Birmingham, Inc.*, 106 F.3d 284, 293 (9th Cir. 1997); *BWP Media USA, Inc. v. P3R, LLC*, 2014 WL 3191160, at *4 (C.D. Cal. Jul. 3, 2014); *Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F. Supp. 1522, 1543 (S.D.N.Y. 1991); *accord Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1335 (9th Cir. 1990); *Warner Bros. Entm't Inc. v. Duhy*, No. CV 09-5798-GHK (FMOx), 2009 WL 5177956, at *1 (C.D. Cal. Nov. 30, 2009)(finding willfulness in a default judgment where plaintiff pled defendant's willfulness in its complaint and buttressed this assertion with evidence of defendant's knowledge of the unlawfulness of their actions).

First, as discussed above, it is undisputed that Ms. Maraj knew she was not permitted to distribute the Infringing Work without permission. (UF 9, Frontera

1 Decl., ¶ 9, Ex. 8 at p. 80 (Supp. Resp. to RFA No. 5) (Ms. Maraj admitted “that
 2 [she] needed a License to use the Composition in the Infringing Work in order to
 3 include the Infringing Work on [her] album Queen.”); *id.* at p. 82 (Suppl. Resp. to
 4 RFA No. 14).)

5 *Second*, the undisputed evidence establishes that Ms. Maraj intended to
 6 distribute the Infringing Work to Mr. Taylor and either Ms. Maraj or someone
 7 acting at her direction did in fact distribute the Infringing Work to Mr. Taylor. It
 8 cannot be disputed that Ms. Maraj told Mr. Taylor she wanted him to world
 9 premiere the Infringing Work the week her Album dropped. (UF 25, Frontera
 10 Decl., ¶ 16, Ex. 15 at p. 147.) It further cannot be disputed that Ms. Maraj told Mr.
 11 Taylor she would text him the Infringing Work less than 24 hours before he
 12 received it via text. (UF 27-29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Nor can it
 13 be disputed that the day Ms. Maraj told Mr. Taylor that she would send him the
 14 Infringing Work, Ms. Maraj’s sound engineer sent the song to Chris Athens to be
 15 mastered and received a “clean” mastered version of the Infringing Work in return.
 16 (UF 30-33, Frontera Decl., ¶ 28, Ex. 27; *id.* at ¶ 19, Ex. 18.) Mr. Taylor then posted
 17 on social media that he got something from Ms. Maraj and testified that he received
 18 the Infringing Work via text. (UF 35, Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at
 19 164:22-165:8; *id.* at 169:5-18; *id.* at 158:11-22) (confirming that Taylor received
 20 the Infringing Work via text).) Further, Mr. Delaine testified that he has never
 21 “sen[t] out any [unreleased] recordings of Ms. Maraj’s to a third party without []
 22 receiving an instruction from Ms. Maraj to send out that recording[.]” (UF 34,
 23 Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at 203:16-23).)

24 As a result, any reasonable trier of fact would conclude that Ms. Maraj was
 25 aware of the unlawfulness of the Infringing Work, and nevertheless willfully
 26 distributed it. Ms. Chapman is entitled to summary judgment on this additional
 27 prong of copyright infringement.

1 **V. CONCLUSION**

2 For all of the foregoing reasons, Ms. Chapman respectfully requests that the
3 Court grant her motion in its entirety and enter judgment in her favor as to the issue
4 of liability for Copyright Infringement, holding that: (1) Ms. Maraj committed
5 copyright infringement by creating the Infringing Work, (2) the creation of the
6 Infringing Work was willful, (3) Ms. Maraj committed copyright infringement by
7 distributing the Infringing Work, and (4) the distribution was willful.

8 Dated: August 17, 2020

Respectfully submitted,

9 MANATT, PHELPS & PHILLIPS, LLP

10 By: /s/ John M. Gatti

11 John M. Gatti
12 *Attorney for Plaintiff*
13 TRACY CHAPMAN
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[REDACTED] EXHIBIT B

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TRACY CHAPMAN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY CHAPMAN,

Plaintiff,

vs.

ONIKA TANYA MARAJ p/k/a
NICKI MINAJ and DOES 1-10,

Defendants.

No. 2:18-cv-09088-VAP

Honorable Virginia A. Phillips

**[REDACTED] PLAINTIFF'S
SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Hearing Date: September 14,
2020

Hearing Time: 2:00 p.m.

Final Pretrial Conf.: October 5, 2020
Trial Date: October 13, 2020

[Filed Concurrently with: 1. Motion for
Summary Judgment; 2. Appendix Of
Evidence; 3. [Proposed] Order]

Plaintiff Tracy Chapman hereby submits this Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment.

PLAINTIFF'S UNDISPUTED FACTS

ISSUE 1: Defendant Onika Tanya Maraj (“Maraj”) infringed on Plaintiff Tracy Chapman’s (“Chapman”) copyright in the track *Baby Can I Hold You* (the “Composition”) when she created an unauthorized derivative work entitled *Sorry* utilizing the Composition (“Infringing Work”).

Pl.’s SUF No.	Fact	Supporting Evidence
1.	Ms. Chapman wrote <i>Baby Can I Hold You</i> (the “Composition”) in 1982.	Declaration of Tracy Chapman (“Chapman Decl.”) at ¶ 2. ¹
2.	On October 20, 1983, Ms. Chapman obtained a copyright registration for the Composition, from the United States Copyright Office.	Declaration of Nicholas Frontera (“Frontera Decl.”), ¶ 5, Ex. 4; <i>id.</i> at ¶ 27, Ex. 26; Chapman Decl. at ¶ 2.
3.	Ms. Chapman is the sole owner of the copyright in the Composition.	Frontera Decl. ¶ 6, Ex. 5; <i>id.</i> at ¶ 27, Ex. 26; Chapman Decl. at ¶¶ 3-4.
4.	In 2017, Ms. Maraj began recording a track entitled <i>Sorry</i> (the “Infringing Work”).	Frontera Decl., ¶ 7, Ex. 6 (Deposition of Onika Tanya Maraj (“Maraj Dep.”) at 50:25-51:3).
5.	The Infringing Work features Nasir bin Olu Dara Jones p/k/a Nas (“Nas”).	Frontera Decl., ¶ 7, Ex. 6 (Maraj Dep. at 52:11-12).
6.	Ms. Maraj admits that the Infringing Work incorporates music and lyrics from the Composition.	Frontera Decl., ¶ 8, Ex. 7 at p. 71 ¶¶ 19, 20; <i>id.</i> at ¶ 9, Ex. 8 at p. 81 (Suppl. Responses to RFA Nos. 8 and 10); <i>see also id.</i> at ¶ 10, Ex. 9 (containing side by side comparison of the Composition and the Infringing Work).

¹ The Declarations of Tracy Chapman and Nicholas Frontera can be found in the Appendix of Evidence at pp. 6 and pp. 34 respectively.

Pl.'s SUF No.	Fact	Supporting Evidence
7.	Ms. Maraj admits that the Infringing Work incorporates a majority of the Composition's lyrics.	Frontera Decl., ¶ 8, Ex. 7 at p. 71 ¶¶ 19, 20; <i>id.</i> at ¶ 9, Ex. 8 at p. 81 (Suppl. Responses to RFA Nos. 8 and 10); <i>see also id.</i> at ¶ 10, Ex. 9 (containing side by side comparison of the Composition and the Infringing Work).
8.	Ms. Maraj admits that the Infringing Work incorporates part of the vocal melody from the Composition.	Frontera Decl., ¶ 8, Ex. 7 at p. 71 ¶¶ 19, 20; <i>id.</i> at ¶ 9, Ex. 8 at p. 81 (Suppl. Responses to RFA No. 11); <i>see also id.</i> at ¶ 10, Ex. 9 (containing side by side comparison of the Composition and the Infringing Work).

ISSUE 2: Maraj's conduct in creating the Infringing Work was willful because she knew she needed Chapman's consent to create the Infringing Work, knew she did not have consent, and continued to work on the Infringing Work despite knowing she did not have Ms. Chapman's consent.

Pl.'s SUF No.	Fact	Supporting Evidence
9.	Ms. Maraj "knew that [she] needed a License to use the Composition in the Infringing Work in order to include the Infringing Work on [her] album Queen."	Frontera Decl., ¶ 9, Ex. 8 at p. 80 (Suppl. Response to RFA No. 5).
10.	Ms. Maraj began recording the Infringing Work, without first seeking Ms. Chapman's authorization to do so.	Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20.
11.	On May 23, 2018, Ms. Maraj's representative began the process of obtaining clearance to use the Composition in the Infringing Work.	Frontera Decl., ¶ 11, Ex. 10 at p. 99; <i>id.</i> at ¶ 10, Ex. 11 (Deposition of Deborah Mannis-Gardner ("Mannis-Gardner Dep.") at 107:11-108:8, 132:10-11, 133:9-14).
12.	On May 23, 2018, Ms. Maraj's	Frontera Decl., ¶ 11, Ex. 10 at p.

Pl.'s SUF No.	Fact	Supporting Evidence
	representative was informed that the Composition was not available for sampling.	99; <i>id.</i> at, ¶ 10, Ex. 11 (Mannis-Gardner Dep. at 109:10-110:14).
13.	Ms. Maraj, again through her representatives, requested Ms. Chapman's authorization to use the Composition in the Infringing Work.	Chapman Decl., ¶ 5, Ex. 2 at p. 27; Frontera Decl., ¶ 13, Ex. 12 at p. 140; <i>id.</i> at ¶ 14, Ex. 13; <i>id.</i> at ¶ 10, Ex. 11 (Mannis-Gardner Dep. at 112:19-114:3; 117:2-119:17; 120:20-121:12, 122:5-15; 126:7-131:18).
14.	Ms. Chapman instructed her representative to deny Ms. Maraj's request to use Ms. Chapman's Composition in the Infringing Work.	Chapman Decl., ¶ 5.
15.	Ms. Chapman's denial was relayed to Ms. Maraj through her representatives.	Chapman Decl., ¶ 5, Ex. 2 at p. 25; Frontera Decl., ¶ 15, Ex. 14; <i>id.</i> at ¶ 10, Ex. 11 (Mannis-Gardner Dep. at 123:22-124:22; 126:7-131:18).
16.	Ms. Maraj, through her representatives, made another request for authorization from Ms. Chapman for use of the Composition in the Infringing Work.	Chapman Decl., ¶ 6, Ex. 3 at pp. 31-32; Frontera Decl. at ¶ 4.
17.	Ms. Maraj also made a personal attempt to reach out to Ms. Chapman on Twitter.	Frontera Decl., ¶ 9, Ex. 8 at p. 83 (Suppl. Resp. to RFA No. 18).
18.	Ms. Chapman was made aware of Ms. Maraj's requests.	Chapman Decl., ¶ 6.
19.	Ms. Chapman again denied the requests.	Chapman Decl., ¶ 6.
20.	Ms. Chapman's denial was communicated to Ms. Maraj's representatives again on August 2, 2018.	Chapman Decl., ¶ 6, Ex. 3 at p. 31; Frontera Decl. at ¶ 4; <i>id.</i> at ¶ 26, Ex. 25 at p. 222.
21.	On August 3, 2018, Ms. Maraj confirmed to Aston George	Frontera Decl., ¶ 16, Ex. 15 at p. 13.

Pl.'s SUF No.	Fact	Supporting Evidence
	Taylor that the Infringing Work would not be on her Album.	
22.	Ms. Maraj and Nas continued working on the Infringing Work after August 3, 2018.	Frontera Decl., ¶ 18, Ex. 17 at pp. 182-87; <i>id.</i> at ¶ 7, Ex. 6 (Maraj Dep. at 55:5-24, 56:15-19; 56:10-24).
23.	On August 5, 2018, Ms. Maraj informed Nas as CONFIDENTIAL ringg	Frontera Decl., ¶ 18, Ex. 17 at p. 187; <i>id.</i> at ¶ 7, Ex. 6 (Maraj Dep. at 59:12-60:2).
24.	On August 5, 2018, Ms. Maraj confirmed to Nas that, CONFIDENTIAL	Frontera Decl., ¶ 18, Ex. 17 at p. 187.

ISSUE 3: Maraj infringed on Chapman's copyright when she (or others acting on her direct orders) distributed the Infringing Work.

Pl.'s SUF No.	Fact	Supporting Evidence
25.	On August 3, 2018, Ms. Maraj, sent Aston George Taylor a direct message from her verified Instagram account asking him to world premiere the Infringing Work on his radio show the week her album <i>Queen</i> was released.	Frontera Decl., ¶ 16, Ex. 15 at p. 147; <i>id.</i> at ¶ 17, Ex. 16 (Deposition of Aston George Taylor ("Taylor Dep.") at 159:1-162:24).
26.	Mr. Taylor indicated he would play the Infringing Work on his show.	Frontera Decl., ¶ 16, Ex. 15 at p. 147; <i>id.</i> at ¶ 17, Ex. 16 (Taylor Dep. at 162:25-163:7).
27.	On August 10, 2018, Ms. Maraj messaged Mr. Taylor:	Frontera Decl., ¶ 16, Ex. 15 at p. 148.

Pl.'s SUF No.	Fact	Supporting Evidence
	CONFIDENTIAL	
28.	Mr. Taylor provided his phone number and confirmed he would play the Infringing Work.	Frontera Decl., ¶ 16, Ex. 15 at p. 148.
29.	Maraj confirmed, CONFIDENTIAL	Frontera Decl., ¶ 16, Ex. 15 at p. 148.
30.	On August 10, 2018, Ms. Maraj's lead recording engineer, Aubry Delaine, reached out to the company that mastered Ms. Maraj's songs for the Album, Chris Athens Masters, Inc., to ask that they master the Infringing Work and return clean and explicit versions.	Frontera Decl., ¶ 28, Ex. 27.
31.	Chris Athens Masters, Inc. mastered the Infringing Work on August 10, 2018.	Frontera Decl., ¶ 19, Ex. 18 at p. 189-90; <i>id.</i> at ¶ 28, Ex. 27; <i>id.</i> at ¶ 20, Ex. 19 (Deposition of Aubry Delaine ("Delaine Dep.") at 206:16-208:4).
32.	On August 10, 2018, David Castro of Chris Athens Masters, Inc., sent Mr. Delaine links to download a clean and an explicit version of the Infringing Work.	Frontera Decl., ¶ 19, Ex. 18 at p. 189-90; <i>id.</i> at ¶ 20, Ex. 19 (Delaine Dep. at 206:16-208:4).
33.	The links only allowed for one download each.	Frontera Decl., ¶ 19, Ex. 18 at p. 189-90; <i>id.</i> at ¶ 20, Ex. 19 (Delaine Dep. at 206:16-208:4).
34.	Mr. Delaine never sends unreleased recordings of Ms. Maraj's work without receiving instructions from Ms. Maraj.	Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at 203:16-23).
35.	On August 11, 2018, Mr. Taylor posted on his Instagram and Twitter accounts promoting the debut of the Infringing Work on his show that night.	Frontera Decl., ¶ 21, Ex. 20; <i>id.</i> at ¶ 22, Ex. 21; <i>id.</i> at ¶ 17, Ex. 16 (Taylor Dep. at 167:18-168:23; 170:1-171:12).
36.	Mr. Taylor received the	Frontera Decl., ¶ 17, Ex. 16

Pl.'s SUF No.	Fact	Supporting Evidence
	Infringing Work via text sometime b[REDACTED] (CONFIDENTIAL) Ms. Maraj telling him [REDACTED] on August 10, 2018, an first social media post promoting the show early afternoon the next day.	(Taylor Dep. at 164:22-165:14, 169:5-18, 158:11-22).
37.	The version of the Infringing Work Mr. Taylor received was a mastered version entitled "01 Sorry - 72518 - master.mp3".	Frontera Decl., ¶ 23, Ex. 22; <i>id.</i> at ¶ 17, Ex. 16 (Taylor Dep. at 172:13-25, 174:22-176:21).
38.	On August 11, 2018 at 7 PM EST, Mr. Taylor broadcast his radio show on Hot 97 FM.	Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at 166:9-13, 173:17-23).
39.	Mr. Taylor played the Infringing Work during the broadcast.	Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at 166:9-13, 173:17-23).

ISSUE 4: Maraj's conduct in distributing the Infringing Work was willful because she knew she needed Chapman's consent to distribute the Infringing Work, and knew she did not have that consent.

Issue No. 4, incorporates the Statements of Undisputed Facts Nos. 1-39.

Dated: August 17, 2020

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP
John M. Gatti
Lauren J. Fried
Nicholas Frontera

By: /s/ John M. Gatti

John M. Gatti
Attorneys for Plaintiff
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[REDACTED] EXHIBIT C

CERTIFIED COPY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRACY CHAPMAN,)	
)	
PLAINTIFF,)	
)	
vs.)	CASE NO. 2:18-CV-09088-VAP-SS
)	
ONIKA TANYA MARAJ P/K/A)	
NICKI MINAJ AND DOES 1-10,)	
)	
DEFENDANTS.)	
_____)	

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
VIDEOTAPED DEPOSITION OF ONIKA TANYA MARAJ
Taken on September 23, 2019



Court Reporting • Video • Trial Presentation

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CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 9

1	Maura Gierl, for the plaintiff.	10:27:01
2	MR. ROSS: Pete Ross, for Onika Maraj.	10:27:04
3	MR. LAURITSEN: Eric Lauritsen, for Onika	10:27:08
4	Maraj.	10:27:10
5	MS. LaPOLT: Dina LaPolt, for Onika Maraj.	10:27:12
6	MS. PRICE: Danielle Price, for Onika	10:27:16
7	Maraj.	10:27:16
8	MR. BRUCE: Tommy Bruce, for Onika Maraj.	10:27:17
9	THE VIDEO OPERATOR: Thank you. The court	10:27:22
10	reporter today is Lori Byrd with eLitigation	10:27:23
11	Services, Inc.	10:27:25
12	Will the reporter please swear in the	10:27:26
13	witness and we can begin.	10:27:26
14	-----	10:27:26
15	ONIKA TANYA MARAJ, p/k/a NICKI MINAJ,	10:27:26
16	called as a witness in this case,	10:27:26
17	having been first duly sworn	10:27:26
18	upon her oath, testified as follows:	10:27:26
19	EXAMINATION	10:27:26
20	BY MR. JACOBS:	10:27:39
21	Q. Good morning, Ms. Maraj.	10:27:39
22	A. Good morning.	10:27:42
23	Q. Can you please state your full name for the	10:27:42
24	record.	10:27:44
25	A. Onika Tanya Maraj.	10:27:45

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 22

1	song getting done.	10:42:57
2	Q. Anything else?	10:43:00
3	A. No.	10:43:02
4	Q. Did you look for any communications you had	10:43:20
5	with a disc jockey named "Flex"?	10:43:24
6	A. Yes.	10:43:31
7	Q. And did you have any?	10:43:32
8	A. No.	10:43:37
9	Q. Who is Flex?	10:43:43
10	A. A DJ.	10:43:46
11	Q. Do you know his full name?	10:43:47
12	A. No.	10:43:49
13	Q. Where is he a DJ?	10:43:50
14	A. In New York.	10:43:51
15	Q. Do you know what radio station?	10:43:54
16	A. Hot 97.	10:43:58
17	(REPORTER REQUESTED CLARIFICATION)	10:44:00
18	THE WITNESS: Hot 97.	10:44:01
19	BY MR. JACOBS:	10:44:02
20	Q. How long have you known him for?	10:44:03
21	A. I think about, maybe over 10 years.	10:44:04
22	Q. Have you ever texted with Flex?	10:44:27
23	A. Yes.	10:44:28
24	Q. When was the last time you texted him?	10:44:29
25	A. About a day or two ago.	10:44:31

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 24

1 spoke about the case on the phone, but we spoke 10:45:46

2 about the case on social media prior to that. 10:45:49

3 Q. When was that? 10:45:52

4 A. I don't remember the date. 10:45:53

5 Q. Do you recall generally what the discussion 10:45:56

6 was over social media you referenced? 10:45:58

7 A. Yes. It was about him saying that he was 10:46:02

8 about to play a song that was, like, a -- an 10:46:04

9 exclusive song. And I -- that was on Twitter. 10:46:09

10 And I went on Instagram and said: Only 10:46:14

11 play the songs that are official album cuts from my 10:46:17

12 album, because my album had just come out. And that 10:46:20

13 was it. 10:46:25

14 Q. Did you have any other communication with 10:46:27

15 him around that same time in any other way? 10:46:28

16 A. Not that I can recall. 10:46:34

17 Q. You don't remember being on the phone with 10:46:37

18 him around that time? 10:46:39

19 A. No. 10:46:42

20 Q. And you don't remember exchanging any text 10:46:42

21 messages -- text messages with him around that time? 10:46:45

22 A. No. 10:46:48

23 Q. Do you recall being on the phone with him 10:46:51

24 between that time and the time you just reached out 10:46:54

25 to him regarding this document you referenced? 10:46:56

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 28

1 will send someone to hear all of your music to see 10:52:43
2 if there's anything that should -- you know, that 10:52:47
3 there's something that maybe there's a sample in the 10:52:51
4 music that you didn't know about or something like 10:52:53
5 that. 10:52:55

6 So they'll send someone to your recording 10:52:56
7 studio, in this case, that will listen to the music. 10:52:59

8 And I forgot the name of the person's 10:53:05
9 occupation. But it's -- deals with ... I think 10:53:07
10 there's a person that I deal with, his name is 10:53:17
11 Joshua Berkman. He is the person that we usually 10:53:19
12 use as the middle man, because he's like the A&R for 10:53:24
13 my projects in the past. And he usually goes about 10:53:29
14 finding the person hiring -- I think it's a 10:53:35
15 musicologist. 10:53:38

16 Q. Does Joshua Berkman work for your record 10:53:46
17 label? 10:53:49

18 A. Yes. 10:53:50

19 Q. And what's the label? 10:53:50

20 A. Republic Records. 10:53:52

21 Q. Are you in direct communication -- 10:54:17
22 withdrawn. 10:54:19

23 Do you talk to Josh about -- Joshua Berkman 10:54:20
24 about his efforts to clear songs for you? 10:54:23

25 A. Yes. 10:54:27

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 37

1 Q. Before you got to his studio, did you have 11:05:36
2 an understanding that -- that there was an interest 11:05:39
3 in doing a version of the Tracy Chapman composition? 11:05:44

4 A. No. 11:05:50

5 Q. So what happened next after you went back 11:05:57
6 to L.A., in relation to your recording vocals for 11:05:59
7 the song? 11:06:04

8 A. I recorded -- oh. 11:06:07

9 I pulled up the Shelly Thunder song. I 11:06:11
10 pulled that up to hear it on YouTube. And I then 11:06:14
11 recorded it in my studio, singing the hook -- 11:06:23
12 singing the chorus of the song. 11:06:29

13 Q. When you say your studio, which studio is 11:06:31
14 that? 11:06:34

15 A. Glenwood. 11:06:35

16 Q. And where is that located? 11:06:36

17 A. I believe it's in Glenwood, California. 11:06:37

18 Q. When you went to look at the Shelly Thunder 11:06:45
19 video, did you notice any references to Tracy 11:06:47
20 Chapman? 11:06:50

21 A. Not one. 11:06:52

22 Q. Do you recall when you recorded the vocals 11:07:01
23 for your song "Sorry"? 11:07:05

24 A. I don't recall what month that was. 11:07:09

25 Q. It was in 2018, though? 11:07:12

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 38

1 A. Actually, if my album came out in 2018, I 11:07:20
2 believe I recorded the song in 2017. Because it was 11:07:25
3 not originally for my album, it was for his album. 11:07:31

4 So I think that it was a lot sooner than 11:07:36
5 when my album came out that I actually cut those 11:07:39
6 vocals. 11:07:42

7 Q. Did the song go out on Nas's album? 11:07:47

8 A. No. 11:07:50

9 Q. Do you know why not? 11:07:51

10 A. I don't know. I don't know. 11:07:55

11 Q. Did you ever have a conversation with 11:08:07
12 anybody about releasing your song "Sorry" on the 11:08:09
13 album "Queen"? 11:08:15

14 A. Did I have a conversation with anyone? 11:08:17

15 Q. Yes. 11:08:19

16 A. Yes. 11:08:20

17 Q. Who did you discuss that with? 11:08:20

18 A. Everyone that I think I would have come in 11:08:23
19 contact with about my album. 11:08:25

20 Q. And did you want to put it on your album 11:08:29
21 "Queen"? 11:08:31

22 A. Yes. 11:08:33

23 Q. And how did it come about that it didn't go 11:08:35
24 on -- withdrawn. 11:08:41

25 How did it come about that you got Nas's 11:08:42

Page 61

2 A. Yes. 11:43:58

4 studio where you recorded, or are they somewhere 11:44:29

```
5     else?                                     11:44:36
```

6 A. The takes are on whatever the -- whatever 11:44:38

7 device we record on. 11:44:41

8 Q. Do you recall what device you recorded 11:44:44

9 "Sorry" on? 11:44:45

10 A. No. 11:44:47

11 Q. Who performs on "Sorry"? 11:45:04

12 A. Myself and Nas. 11:45:07

13 Q. Are there any musicians? 11:45:14

14 A. Not that I know of. 11:45:16

11:45:52

20 Q. At the time you recorded it, you intended 11:45:54

21 it to go out on his album -- 11:45:58

22 A. Yes. 11:46:00

23 Q. -- is that correct? 11:46:00

24 Did you record an explicit version of 11:46:33

```
25      "Sorry"?                                     11:46:36
```

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 62

1	A.	The original version is explicit.	11:46:38
2	Q.	Is there a clean version of the song?	11:46:52
3	A.	I'm not sure.	11:46:55
4	Q.	Do you know somebody named Chris Athens?	11:47:05
5	A.	The name sounds familiar, but I'm not sure.	11:47:09
6	Q.	Do you know of a company called Chris	11:47:13
7		Athens Masters?	11:47:14
8	A.	Not off the top of my head.	11:47:18
9	Q.	Do you know somebody named Curt Bradley?	11:47:24
10	A.	No.	11:47:28
11	Q.	Do you know somebody named David Castro?	11:47:29
12	A.	No.	11:47:32
13	Q.	Dave Huffman?	11:47:34
14	A.	No.	11:47:37
15		MR. ROSS: Let's take a break.	11:47:50
16		MR. JACOBS: Do you want to take a break?	11:47:51
17		MR. ROSS: Yes, please.	11:47:53
18		MR. JACOBS: Sure.	11:47:54
19		THE VIDEO OPERATOR: Here marks the end of	11:47:56
20		tape number 1 in the video deposition of Ms. Maraj.	11:47:57
21		And we're off the record at 11:48 A.M.	11:48:00
22		(RECESS TAKEN FROM 11:48 TO 11:59 A.M.)	11:48:50
23		THE VIDEO OPERATOR: Here marks the	11:59:50
24		beginning of tape number 2 in the video deposition	11:59:51
25		of Ms. Maraj. And we're back on record at	11:59:54

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 63

1	11:59 A.M.	11:59:57
2	BY MR. JACOBS:	12:00:00
3	Q. Ms. Maraj, do you know somebody named Kenny	12:00:02
4	Meiselas?	12:00:05
5	A. Yes.	12:00:07
6	Q. And who is he?	12:00:08
7	A. He was my attorney.	12:00:09
8	Q. He no longer is your attorney?	12:00:10
9	A. That's correct.	12:00:12
10	Q. When did he stop being your attorney?	12:00:13
11	A. I'm not sure of the exact date. Sometime	12:00:15
12	this year.	12:00:17
13	Q. Before summer? Or since summer?	12:00:22
14	A. I don't remember.	12:00:24
15	Q. Do you know somebody named Stuart Prager?	12:00:25
16	A. I'm not sure.	12:00:28
17	Q. Have you heard the name before?	12:00:36
18	A. I'm not sure.	12:00:38
19	Q. Are you aware of any efforts by Kenny	12:00:49
20	Meiselas to clear the use of the Tracy Chapman	12:00:50
21	composition "Sorry"?	12:00:56
22	A. I'm not sure.	12:01:00
23	Q. You're not sure, meaning you don't have any	12:01:01
24	recollection of any effort?	12:01:04
25	A. Could you repeat the question?	12:01:06

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 64

1 Q. When you say you're not sure, does that 12:01:07
2 mean you have no recollection of him making any such 12:01:08
3 effort? 12:01:11

4 A. Right. 12:01:12

5 MR. JACOBS: I'd like to mark as 12:02:19

6 Plaintiff's Exhibit 102 a text chain. It was 12:02:20

7 produced by the defendant with Bates number 12:02:29

8 MINAJ000032 through 37. 12:02:34

9 (DEPOSITION EXHIBIT 102 MARKED FOR 12:02:50

10 IDENTIFICATION) 12:02:52

11 BY MR. JACOBS: 12:02:59

12 Q. Ms. Maraj, if you could take a minute and 12:03:01

13 look at Plaintiff's Exhibit 102 and let me know 12:03:02

14 after you've done so, I'd appreciate it. 12:03:06

15 A. (Perusing document) 12:03:09

16 Q. Do you recognize Plaintiff's Exhibit 102? 12:03:25

17 A. Yes. 12:03:28

18 Q. What is it? 12:03:28

19 A. A text. 12:03:29

20 Q. A text between whom? 12:03:30

21 A. Myself and Nas. 12:03:32

22 Q. Are you -- are your texts in the darker 12:03:36

23 blue, or the lighter shade? 12:03:42

24 A. Blue. 12:03:45

25 CO [REDACTED] [REDACTED]

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 65

1 "Tell that lady clear the damned 12:04:06
2 song." 12:04:10
3 Do you see that? 12:04:11
4 A. Yes. 12:04:12
5 Q. Do you have an understanding of who he's 12:04:12
6 referring to? 12:04:14
7 A. Yes. 12:04:14
8 Q. Who's he referring to? 12:04:16
9 A. I believe he's referring to Tracy Chapman. 12:04:18
10 Q. And that's your response immediately 12:04:30
11 following it: 12:04:32
12 "SMH. By the way, did you ever 12:04:33
13 approve a mix?" 12:04:35
14 A. Yes. 12:04:40
15 Q. When you say "did you ever approve a mix" 12:04:47
16 to Nas, what are you referring to? 12:04:50
17 A. A mix of the song. 12:04:53
18 Q. A mix of the song "Sorry"? 12:04:54
19 A. Yes. 12:04:55
20 Q. The next page refers -- withdrawn. 12:05:16
21 The next page appears to reflect a mix -- 12:05:19
22 or that you sent him a mix. 12:05:23
23 Is that correct? 12:05:25
24 A. Yes. 12:05:26
25 Q. Did this mix contain the rap verse that you 12:05:39

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 66

1 wrote and recorded? 12:05:42

2 A. Yes. 12:05:44

3 Q. To your knowledge, had Nas heard that 12:06:06

4 version prior to this date? 12:06:09

5 A. I'm not sure. 12:06:11

6 Q. The reference -- withdrawn. 12:06:27

7 Do you see the reference to "Queensbridge" 12:06:30

8 on page 2 of Plaintiff's Exhibit 102? 12:06:32

9 A. Yes. 12:06:35

10 Q. Do you know what that's a reference to? 12:06:35

11 A. I'm not sure. It looks like it may have 12:06:44

12 been the password. 12:06:46

13 Q. On the next page, am I correct that you 12:07:22

14 wrote: 12:07:25

15 "We'll go in and make the changes 12:07:27

16 if you want, then we can go from 12:07:30

17 there"? 12:07:32

18 A. Yes. 12:07:35

19 Q. Did you, in fact, make changes to your mix 12:07:36

20 based on the comments he made? 12:07:39

21 A. I don't think so. 12:07:44

22 Q. Why didn't you? 12:07:52

23 A. I'm not sure. 12:07:53

24 Q. On the following page, am I correct that 12:08:11

25 you're saying: 12:08:13

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 67

1	"I'm in the booth. I'll hit you	12:08:15
2	tomorrow"?	12:08:18
3	A. Yes.	12:08:20
4	Q. Do you recall what you were in the booth	12:08:20
5	for?	12:08:22
6	A. No.	12:08:22
7	Q. Below that there's a reference to --	12:08:37
8	withdrawn.	12:08:42
9	Below that, am I correct that Nas says:	12:08:42
10	I'll go in the lab Sunday or	12:08:45
11	Monday and adlib the hook?	12:08:48
12	MR. ROSS: That's not what the document	12:08:53
13	says. You misread it.	12:08:54
14	BY MR. JACOBS:	12:09:01
15	Q. Do you see the text below the one you sent	12:09:02
16	where it says:	12:09:05
17	"I'm in the booth, I'll hit you	12:09:05
18	tomorrow."	12:09:08
19	It goes on to say:	12:09:09
20	"Good morning. I'll go in the lab	12:09:11
21	Sunday night or Monday and adlib	12:09:15
22	the hook. Just see if we like it.	12:09:17
23	If it's not [sic] all good"?	12:09:20
24	A. "If not, it's all good"? Yes.	12:09:22
25	Q. And is that something that Nas wrote to	12:09:24

CONFIDENTIAL

[illegible]

CONFIDENTIAL

: 43

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 77

1 Q. Why didn't you call him at the time? 12:24:50

2 A. Because I communicated on here. That's 12:24:52

3 what would have been my text. 12:24:57

4 "You can only play official album 12:24:58

5 material." 12:25:00

6 And that's what I said to him on Instagram. 12:25:02

7 Q. And what do you mean by: 12:25:05

8 "You can only play official album 12:25:06

9 material, sir"? 12:25:09

10 A. Meaning that I want him to play album 12:25:11

11 songs, songs that are on my album. 12:25:13

12 Q. Did you have an understanding when you saw 12:25:23

13 his post what he was referring to in terms of what 12:25:25

14 song he was planning to play? 12:25:31

15 A. It was confusing, because it -- it's 12:25:35

16 obvious that I did a song with Nas from my album. 12:25:38

17 So when I saw this and he said: "Nicki 12:25:44

18 Minaj feature Nas, not on her album," I could only 12:25:47

19 guess that he was going to try to play the song that 12:25:52

20 I had with Nas. 12:25:56

21 Because he put a -- he put up a photo with 12:25:57

22 me and Nas, and said: "Nicki Minaj feature Nas, and 12:25:59

23 it's not on her album." 12:26:06

24 Q. Are there any songs on Queen that feature 12:26:08

25 Nas? 12:26:11

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 78

1 A. No. 12:26:11

2 Q. So just so I'm clear, when you saw this 12:26:13

3 post, did you have an understanding that this was 12:26:19

4 "Sorry" he was referring to? 12:26:22

5 A. I didn't understand that. But it was one 12:26:25

6 of my guesses. 12:26:28

7 And the other thing is, I didn't know if he 12:26:30

8 was just, like, joking, either. 12:26:32

9 I didn't know if he really had music, or if 12:26:38

10 he was just playing my album. Because my album had 12:26:40

11 just come out. So it was a bit weird. 12:26:43

12 But he's a very funny person. So I 12:26:46

13 didn't -- so I wasn't sure if he was kidding, if he 12:26:52

14 was serious, and what he was going to play, because 12:26:56

15 he didn't say the song name or anything. 12:26:58

16 So I was, like, maybe he's just doing this 12:27:01

17 for people to enjoy a show. I wasn't sure. 12:27:03

18 Q. Do you have an understanding about how he 12:27:15

19 got a recording of "Sorry"? 12:27:19

20 A. No. 12:27:20

21 Q. So he didn't tell you how he got a copy of 12:27:23

22 it? 12:27:25

23 A. No. 12:27:26

24 Q. Do you have an understanding about how 12:27:39

25 anybody affiliated with that radio station may have 12:27:41

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 79

1 gotten a copy of a recording of "Sorry"? 12:27:43

2 A. Probably the same way everyone gets music 12:27:45

3 that's unreleased. You just have -- I mean, songs 12:27:48

4 just leak. People get songs through e-mails, texts. 12:27:54

5 You could mistakenly send a song to the 12:27:59

6 wrong phone number. Someone can have it that way. 12:28:01

7 A billion different reasons how these songs 12:28:04

8 leak, because they're going back and forth between 12:28:08

9 so many different people, being mixed, being 12:28:10

10 mastered, being sent to people for approval, 12:28:14

11 lawyers, labels. 12:28:16

12 I have no clue. Songs get leaked every 12:28:18

13 day. 12:28:21

14 In fact, my song got leaked last week. Two 12:28:21

15 songs got leaked last week. I have no clue how. 12:28:24

16 Q. With respect to "Sorry" specifically, do 12:28:28

17 you know of anybody who leaked it to anybody? 12:28:31

18 A. No. 12:28:33

19 Q. So your reference to the possibility of 12:28:35

20 leaks, you have no knowledge that that actually 12:28:38

21 happened with "Sorry"? 12:28:40

22 A. It's clear that it happened, because how 12:28:41

23 would he have gotten the song? 12:28:43

24 How would anybody have a song unless it 12:28:45

25 leaked? 12:28:47

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 80

1 Q. But you know of nobody who actually leaked 12:28:48
2 it? 12:28:50

3 A. Correct. 12:28:51

4 Q. Did you undertake any investigation to 12:28:55
5 determine if the song was leaked? 12:28:58

6 A. An investigation? What do you mean? 12:29:00

7 Q. Did you have anybody look into whether the 12:29:02
8 song was leaked? 12:29:05

9 A. Yes. Everyone looked into it, to my 12:29:06
10 knowledge. Everyone on the label and management 12:29:08
11 looked into it. 12:29:10

12 Q. So when you say "everybody in management," 12:29:11
13 who are you referring to? 12:29:14

14 A. Do you want me to name the people at the 12:29:19
15 management company? 12:29:20

16 Q. The people that you believe were involved 12:29:21
17 in investigating whether there was a leak, yes. 12:29:23

18 A. I don't know if this is an investigation. 12:29:25
19 I just know that they were made aware my song was -- 12:29:27
20 an unreleased song was played on the radio. And we 12:29:30
21 discussed how did the song come out, how was the 12:29:33
22 song played if it's not on my album. 12:29:36

23 Q. Do you know of any steps taken by anybody 12:29:38
24 at management or the label to determine if, in fact, 12:29:40
25 there was a leak of the song? 12:29:43

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 81

1 A. Well, normally, what they do -- I don't 12:29:46
2 know specifically with this song. 12:29:48

3 Normally, they just try to go online and 12:29:50
4 see what was the first source of the song coming 12:29:52
5 out. 12:29:54

6 So whether it was like a blog who leaked 12:29:55
7 it; whether it was someone's -- a personal person's 12:29:57
8 Instagram page who may have leaked the song. 12:30:03

9 They'll go and see if they can Google what 12:30:07
10 radio station played the song first. 12:30:09

11 So I mean, it wasn't anything specifically 12:30:11
12 different with this song, to my knowledge. 12:30:13

13 Q. Let me ask you one more time, and then I'll 12:30:18
14 move on: 12:30:20

15 Are you aware, with respect to "Sorry," in 12:30:21
16 particular, of any steps taken by anybody to 12:30:24
17 investigate whether there was a leak, and by whom? 12:30:26

18 A. Could you repeat the question? 12:30:34

19 Q. Sure. 12:30:35

20 Are you aware with respect to "Sorry," in 12:30:36
21 particular, of any steps taken by anybody to 12:30:39
22 investigate whether there was a leak, and by whom? 12:30:41

23 A. Because of this, I believe that steps were 12:30:48
24 taken on both ends to find out how this radio 12:30:51
25 station obtained the song. 12:30:55

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 82

1 So I don't know specifically what we did on 12:30:57

2 our end, but we know that this was an issue. 12:30:59

3 Q. When you say "steps were taken on both 12:31:05
4 ends," you mean in your team, and on the radio's 12:31:07
5 side? 12:31:13

6 A. No. On Tracy Chapman's side. 12:31:13

7 Q. And other than what you've told me already 12:31:24
8 regarding what you think may have happened on your 12:31:27
9 side, was there anything else that you're aware of 12:31:28
10 that was done on your side to investigate any leaks? 12:31:31

11 A. Other than what the leaks department does 12:31:34
12 at a record company, no. 12:31:36

13 And I don't know what steps they actually 12:31:38
14 take, but I know that they investigate in their own 12:31:40
15 way. 12:31:42

16 Q. Did you ask Nas if he gave the song to 12:32:14
17 anybody? 12:32:17

18 A. I don't remember asking him that. 12:32:19

19 Q. Do you know anybody else at Hot 97, other 12:32:30
20 than Nas -- sorry, withdrawn. 12:32:33

21 Do you know anybody at Hot 97, other than 12:32:36
22 Flex? 12:32:39

23 A. Yes. 12:32:44

24 Q. Who? 12:32:44

25 A. People that work at the station. 12:32:45

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
Onika Tanya Maraj

Page 92

1 STATE OF _____)
2 COUNTY OF _____)

3

4

5 DEPONENT'S DECLARATION

6

7 I certify under penalty of perjury that
8 the foregoing is true and correct, with addition of
9 correction page, if any corrections are made.

10

11

12

13 Executed at {city>>>}_____on
14 {date>>>}_____.

15

16

17

18

19

20

ONIKA TANYA MARAJ
(Signature of Deponent)

21

22

23

24

25

[REDACTED] EXHIBIT D

CONFIDENTIAL



CONFIDENTIAL



MINAJ000033

CONFIDENTIAL



MINAJ000034

CONFIDENTIAL



MINAJ000035

CONFIDENTIAL



MINAJ000036

CONFIDENTIAL



MINAJ000037

[REDACTED] EXHIBIT E

CERTIFIED COPY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRACY CHAPMAN,)	
)	
PLAINTIFF,)	
)	
vs.)	CASE NO. 2:18-CV-09088-VAP-SS
)	
ONIKA TANYA MARAJ P/K/A)	
NICKI MINAJ AND DOES 1-10,)	
)	
DEFENDANTS.)	
_____)	

DEPOSITION OF ASTON GEORGE TAYLOR

Taken on February 11, 2020



Court Reporting • Video • Trial Presentation

LA 310.230.9700 • SF 415.445.0105
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Aston George Taylor

Page 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY CHAPMAN,)	
)	
Plaintiff,)	
)	Civil Action No:
)	2:18-cv-09088-VAP-SS
-v-)	
)	
ONIKA TANYA MARAJ p/k/a)	
NICKI MINAJ)	
and DOES 1-19,)	
)	
Defendants.)	
)	
-----)	

VIDEOTAPED DEPOSITION OF
ASTON GEORGE TAYLOR
TAKEN ON TUESDAY, FEBRUARY 11, 2020

BY: DARBY GINSBERG, RPR

Aston George Taylor

Page 2

1 UNITED STATES DISTRICT COURT
 2 CENTRAL DISTRICT OF CALIFORNIA
 3

4 TRACY CHAPMAN,)
)
 5 Plaintiff,)
) Civil Action No:
 6) 2:18-cv-09088-VAP-SS
 -v-)
 7)
 ONIKA TANYA MARAJ p/k/a)
 8 NICKI MINAJ)
 and DOES 1-19,)
 9)
 Defendants.)
 10)
 -----)
 11)
 12)

13 DEPOSITION of ASTON GEORGE TAYLOR,
 14 taken on behalf of the Plaintiff, at 7 Times
 15 Square, New York, New York, commencing at
 16 9:41 a.m. and ending at 4:01 p.m., Tuesday,
 17 February 11, 2020, before Darby Ginsberg,
 18 Registered Professional Reporter and Notary
 19 Public of the State of New York, pursuant to
 20 Notice.
 21
 22
 23
 24
 25

Aston George Taylor

Page 3

1
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27 MICHAEL SPAZIANI, Legal Video Specialist
28 PIO FERRO

Aston George Taylor

Page 4

1 INDEX OF EXAMINATION

2 WITNESS:

3 ASTON GEORGE TAYLOR

4
5 EXAMINATION PAGE

6 BY MR. GATTI 7

7 BY MR. MITCHELL 226

8 BY MR. GATTI 313

9 BY MR. MITCHELL 321

10 BY MR. GATTI 323

11
12 E X H I B I T S

13 NUMBER DESCRIPTION PAGE

14 Exhibit 127 subpoena 16

15 Exhibit 128 subpoena to produce
16 documents 3817 Exhibit 129 document Bates
18 numbered Flex 000013
19 through 000015 10020 Exhibit 130 one-page document
21 Bates numbered Flex
22 000002 16023 Exhibit 131 document Bates numbered
24 Flex 000001 175

25 Exhibit 132 Instagram post 179

Aston George Taylor

Page 5

I N D E X (CONT.)

NUMBER	DESCRIPTION	PAGE
Exhibit 133	one-page document Bates	
	stamped Flex 00003	182
Exhibit 134	document Bates stamped	
	Flex 4	186
Exhibit 135	document Bates stamped	
	Flex 000005	190
Exhibit 136	one-page document Flex	
	Bates stamp 6	198
Exhibit 137	printout Bates stamped	
	MS1	205
Exhibit 138	printout of Hot 97	
	app page	209
Exhibit 139	document Bates stamped	
	Flex 7	212
Exhibit 140	document Flex Bates	
	stamped 8	222

Aston George Taylor

Page 6

1 NEW YORK, NEW YORK,
2 TUESDAY, FEBRUARY 11, 2020

3 AT 9:41 A.M.

4 ASTON GEORGE TAYLOR,

5 having been duly sworn,

6 was examined and testified as follows:

7 (Reporter's opening statement)

8 THE VIDEOGRAPHER: Good morning.

9 My name is Michael Spaziani. I am a
10 certified legal video specialist
11 working with eLitigation Services. I
12 am neither a relative nor employee of
13 any of the parties and have no
14 financial interest in the outcome of
15 this action.

16 Today's date is February 11,
17 2020, and the current time is 9:41.
18 This is the videotaped deposition of
19 Aston George Taylor. The case number
20 is Civil Action Number 2:18-cv-09008-
21 VAP-SS, and the entitled case matter is
22 Tracy Chapman versus Onika Tanya Maraj.
23 This deposition is being taken on
24 behalf of the plaintiff. We are now on
25 the record.

Aston George Taylor

Page 96

1 7:00 but I just do that for people to tune
2 in and listen. So it would happen in --
3 you know, somewhere in there.

4 Q. Okay. And I think we established
5 earlier that you did, in fact, at some
6 point receive a copy of the song Sorry,
7 correct?

8 A. Yes.

9 Q. That's yes?

10 A. Yes.

11 Q. Okay. And, again, I am not going
12 to go over things again, but can you tell
13 me, to the best of your recollection, if
14 you know --

15 A. Uh-huh.

16 Q. -- the form that you received it
17 in? Was it a direct message? Was it a
18 text? Was it an email? Do you have any
19 recollection?

20 A. It was text.

21 Q. Okay. To your phone?

22 A. I think so.

23 Q. Okay. Do you only have one cell
24 phone?

25 A. Yes.

Aston George Taylor

Page 100

1 MR. GATTI: Let me mark as the
2 next exhibit, which will be 129. It is
3 three pages of documents Bates numbered
4 Flex 000013 through 000015. We will
5 mark this as 129.

6 (Exhibit 129, document Bates
7 numbered Flex 000013 through 000015,
8 marked for Identification.)

9 Q. I am going to ask you,
10 Mr. Taylor, if you could just take just a
11 quick glance at the three pages and ask you
12 some questions about it.

13 A. Uh-huh.

14 Q. First off, those numbers I have
15 referred to, I will represent to you that
16 these are documents that have been produced
17 by you in connection with the subpoena that
18 was served on you.

19 A. Uh-huh.

20 Q. Do you -- taking a look at these,
21 do you recall or do you recognize these
22 documents?

23 A. Yeah.

24 CO [REDACTED]
NF [REDACTED]
ID [REDACTED]
EN [REDACTED]

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Aston George Taylor

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Aston George Taylor

Page 133

CONFIDENTIAL

_____, _____, _____, _____

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© 2006 The Authors

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██████████

[REDACTED]

--	--	--

[REDACTED] [REDACTED]

Aston George Taylor

Page 155

1 in a little different section. This was

2 really to whoever was following me.

3 Whoever was following me.

4 Q. Do you know if Ms. Minaj was

5 following you at that time?

6 A. You know something? This is when

7 you said, I don't -- I don't know. I don't

8 think -- I don't know. I don't know.

9 Q. Did you have -- as of August 11,

10 2018, you -- at or about 7:00 p.m. or

11 thereafter, you broadcast the song Sorry

12 and premiered it --

13 A. Uh-huh.

14 Q. -- as you testified to. You

15 don't need to go over that, but did you

16 have any communications with Ms. Minaj

17 after August 11th?

18 A. After August 11th?

19 Q. After premiered.

20 A. I know she came to the show at

21 some point or I went to Queen Radio. I

22 went to her -- I don't know which one

23 happened first.

24 Q. After you premiered the song

25 Sorry on August 11, 2018, on your show, did

Aston George Taylor

Page 160

1 don't know if I am using the right word.

2 Q. Did the song Sorry, after you
3 broadcast it, was linked to Hot 97's
4 website, correct?

5 A. I don't know. I'm not sure.

6 Q. Are you aware that the song
7 was -- went viral on the Internet?

8 A. I --

9 MR. MITCHELL: Object to the form
10 of the question.

11 THE WITNESS: I'm not sure.

12 Q. Are you aware of any response to
13 your show, good or bad? The show that --
14 the show that premiered Sorry.

15 A. I do a lot, so, you know, it's
16 not -- it's -- I don't remember. I don't
17 remember. I don't at the time.

18 MR. GATTI: Let me mark as the
19 next exhibit, which will be 130. The
20 document is a one-page document Bates
21 numbered Flex 000002.

22 (Plaintiff's Exhibit 130,
23 one-page document Bates numbered Flex
24 000002, marked for Identification.)

25 Q. I just want to -- as you are

Aston George Taylor

Page 161

1 looking at it, I just wanted to ask you if

2 you recognize this document.

3 A. Yes. My Tweet.

4 Q. Okay. I was going to say, this
5 is a Tweet from Funk Flex; is that correct?

6 A. Correct. Yes.

7 Q. Do you recall after you see it,
8 that you Tweeted this message?

9 A. Well, it was actually a repost
10 from my Instagram. So as I put on my
11 Instagram, it went through my Twitter at
12 the same time.

13 Q. And just for the record, it says,
14 "Shhh!!!! TONIGHT 7:00 p.m.!!! Nicki gave
15 me something!!! @ Nicki Minaj featuring ft
16 @Nas. (Not on her album). Going to stop
17 the city tonight." With many exclamation
18 points, and it's a reference to Instagram
19 at the bottom.

20 Is that a -- what you were
21 saying, that was a --

22 A. Post. So there is probably a
23 picture associated with it on the Gram.

24 Q. Okay. And it was reTweeted, as
25 it says, 1,030 times. You don't have any

Aston George Taylor

Page 171

1 your possession, correct?

2 A. When I posted this?

3 Q. Yeah.

4 A. Yes.

5 Q. Okay. Do you recall when in the
6 time period between Ms. Minaj asking for
7 your -- for you to text your mobile number
8 to her on August 10th and 1:55 p.m. on
9 August 11th, when you actually received
10 possession of the song Sorry?

11 A. From -- you are saying if I -- if
12 she --

13 Q. I am saying -- no, I am just
14 saying: Between the time that Ms. Minaj --

15 A. I'm not sure. I'm not sure on
16 that. But I definitely -- somewhere in
17 between before this because I definitely
18 Tweet this after I got it.

19 Q. Okay. So I am correct; so
20 between the time on August 10th that
21 Ms. Minaj direct messaged you asking for
22 your -- your cell phone number and you
23 provided it to her, and 1:55 p.m. on August
24 11, 2018, you came into possession of the
25 song Sorry, correct?

Aston George Taylor

Page 182

1 Let me mark as Exhibit 133, it's

2 a document Flex 00003 Bates number.

3 One-page document.

4 (Exhibit 133, one-page document

5 Bates stamped Flex 00003, marked for

6 Identification.)

7 THE WITNESS: Uh-huh.

8 Q. Just after looking at this

9 document, again, is that your Twitter

10 account name and picture in the top left

11 corner?

12 A. Yes.

13 Q. Okay. And this one is now at --

14 timestamped 2:34 on August 11, 2018?

15 A. Uh-huh.

16 Q. Which was approximately about

17 40 minutes after your previous Twitter post

18 we talked about; is that correct?

19 A. Uh-huh. Yes.

20 Q. Do you -- can you tell me why

21 there is an -- it's another post of the

22 same -- of the prior posting?

23 A. It's the same thing? I mean, I

24 might Twitter. Okay. So sometimes the way

25 that Facebook is, you may see a couple of

Aston George Taylor

Page 183

1 Tweets more than once. Sometimes it just
2 does it. I mean, I would have wanted it to
3 go out more than once.

4 Q. And I will show you the post in
5 the prior exhibit, and the post in this
6 exhibit appear to be exactly the same
7 instead of spelling Nicki with a "Y" in the
8 previous post, and I can show you your
9 spelling?

10 A. Might be an "I"?

11 Q. Yes, when you say Nicki gave me
12 something, now it's spelled with an "I."

13 A. It's not spelled with an I.

14 MS. McNAMARA: This is with an
15 "I" too.

16 MR. GATTI: The other one.

17 MS. McNAMARA: Oh, the other one
18 is a "Y." I am sorry.

19 THE WITNESS: I am not sure. I
20 might have corrected it.

21 MS. McNAMARA: Oh.

22 THE WITNESS: I don't know.

23 Q. Again, you are the only one
24 controlling these submissions, these
25 postings?

Aston George Taylor

Page 194

1 my section, so I would have had to have
2 sent it to the guy running the board. I
3 would have had to send it to the guy who
4 has my computer.

5 Q. Who are those individuals? Who
6 ran the board?

7 A. I'm not sure who was running it
8 that day, but I probably sent it to Tat,
9 and he probably sent it to whoever -- if he
10 wasn't, he would send it to whoever is
11 running it. I mean, it will take it
12 through like three or four people.

13 Q. And who had your computer you
14 said?

15 A. A guy HR.

16 Q. Who is that?

17 A. Former intern.

18 Q. What's his name?

19 A. HR. It really is the letter "H"
20 and letter "R."

21 Q. Do you know him by any other name
22 other than HR?

23 A. I just know him as --

24 Q. Was he hired by the station or
25 directly by you?

Aston George Taylor

Page 210

1 app page, marked for Identification.)

2 Q. For the record, it's Exhibit 9,
3 number 9. Just looking at this, do you
4 have any recollection of what this is?

5 A. It looks like it's a Hot 97 app;
6 is that correct.

7 Q. That is a printout of the Hot 97
8 app page.

9 A. Uh-huh.

10 Q. And there is a reference to your
11 show.

12 A. Uh-huh.

13 Q. And it says, halfway through --
14 down it says, "Funk Flex mix premier of
15 Nicki Minaj and Nas."

16 A. Yep.

17 Q. And it shows an air date of
18 Saturday, August 11, 2018, at 7:00 p.m.
19 Eastern Time; is that --

20 A. Pow.

21 Q. -- accurate to your reflection as
22 to when the premier occurred?

23 A. Yeah.

24 Q. Do you know if through this app
25 Sorry was posted on the Hot 97 app? Can

Aston George Taylor

Page 212

1 accessed through the link, through the app?

2 A. I think the mix, meaning that it
3 may be within nine or ten records, but
4 it's -- it's there, you know.

5 Q. Uh-huh?

6 A. It would be -- it's never
7 usually -- I don't think -- it never goes
8 to a song. It goes to a mix or it probably
9 take -- if I played that song for seven
10 minutes, it probably has a 30-minute mix of
11 songs I played before and after. I think.
12 That's usually.

13 Q. I understand. Thanks.

14 After you received a copy of the
15 song Sorry, did you send it to anyone else?

16 A. When I -- well, the board
17 operator on my computer, HR and Tat.

18 Q. Okay. Anybody else you recall
19 sending this out to?

20 A. I don't recall sending it to
21 anyone.

22 (Exhibit 139, document Bates

23 stamped Flex 7, marked for

24 Identification.)

25 MR. GATTI: Let me mark as 139,

Aston George Taylor

Page 213

1 Flex document number 7. It's a
2 one-page document. It has a reference
3 to some redacting. It is a -- from DJ
4 HR to Funk dated August 11, 2018, at
5 4:48 p.m. Eastern Time.

6 Q. So DJ HR,
7 DJheavyrotation@GMail.com. Do you see
8 that?

9 A. Same person, yes.

10 Q. So that's the HR person who you
11 were referring to?

12 A. Uh-huh.

13 Q. You had at the bottom there what
14 appears to be a message, an email from you,
15 DJ Funk Flex@GMail.com wrote, "Don't email
16 to anyone," and then there is an attachment
17 to a document, which is entitled
18 Sorry72518master. Mp3; do you see that?

19 A. Yes.

20 Q. And it's signed or at least at
21 the end it says Funk Flex? Do you recall
22 sending this email to DJ HR?

23 A. Yep. I remember.

24 Q. And was it sent on or about
25 August 11 at 2:43 p.m. on 2018?

Aston George Taylor

Page 214

1 A. I am not sure of the time, but I
2 sent it.

3 Q. Do you have any reason to doubt
4 it was sent at that time?

5 A. No.

6 Q. Okay. Did you and DJ HR have any
7 discussions about sending it to him?

8 A. No.

9 Q. What was the purpose for you
10 sending it to DJ HR?

11 A. So he could put it in my
12 computer.

13 Q. And was that in preparation for
14 the show broadcast?

15 A. It plays out of my computer in
16 the mix booth.

17 Q. You said, "Don't email to
18 anyone." What did you mean by that?

19 A. That, you know, I just don't want
20 any -- I don't want the other stations to
21 get it.

22 Q. How did you know that anybody you
23 were getting this recording of Sorry from
24 wasn't already talking to another station?

25 A. That's why I got to get it on

Aston George Taylor

Page 315

1 A. No.

2 Q. Okay.

3 A. Uh-uh.

4 Q. Were you ever contacted by anyone
5 regarding an investigation into how Sorry
6 was leaked to you?

7 A. No.

8 Q. You said that it was your
9 understanding that Nas didn't want the --
10 you had heard, I think you said, that Nas
11 didn't want the song Sorry to come out?

12 A. Well, I just know that I heard
13 that he didn't want -- I heard that he just
14 didn't want to be rapping with her. It
15 wasn't a particular song.

16 Q. Who did you hear that from? Do
17 you recall?

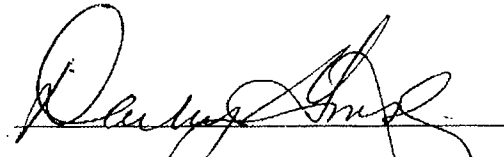
18 A. I mean, you know, these rappers,
19 just, you know, people, people who are in
20 the business that, you know, look, it made
21 him look mushy. Regardless, it's his
22 image.

23 Q. Okay. With respect to these
24 interns and bloggers that work with you, is
25 it -- do you recall if any one of those

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I declare under penalty of perjury
under the laws of New York that the
foregoing is true and correct.

Dated this 18th day of February, 2019



DARBY L. GINSBERG

Aston George Taylor

Page 325

1 February 11, 2020

2

3 ERRATA

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5 PAGE/LINE CHANGE/REASON

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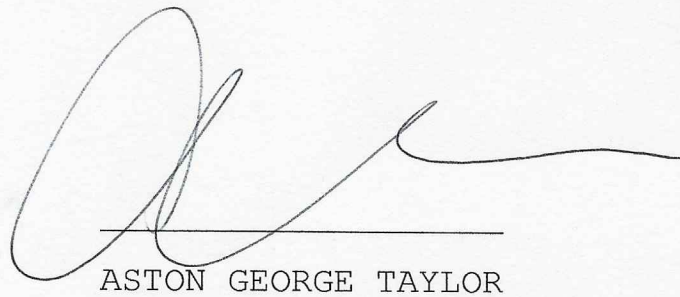
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Aston George Taylor

Page 326

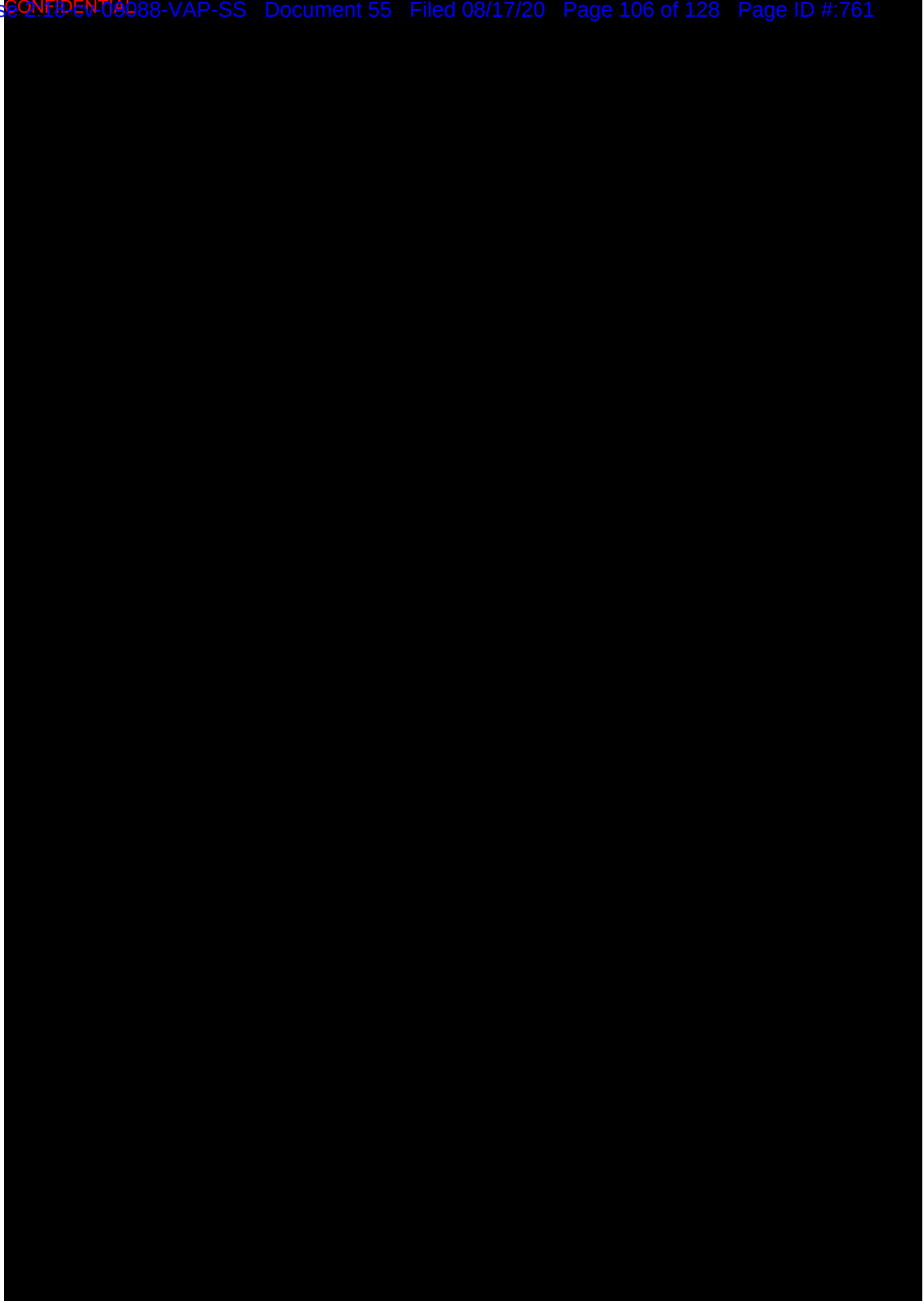
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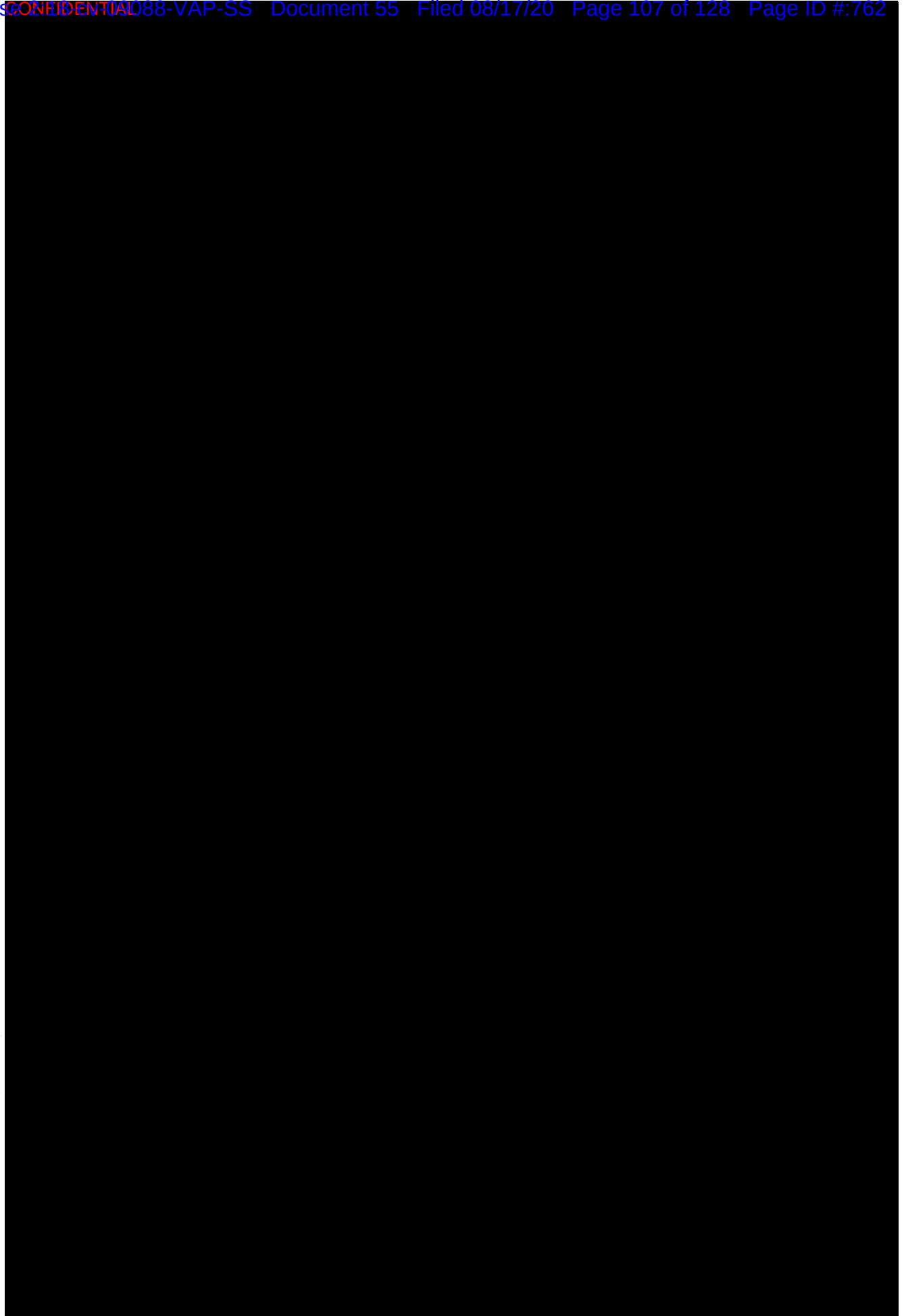


ASTON GEORGE TAYLOR

Subscribed and sworn to
before me this day
of 2020

[REDACTED] EXHIBIT F





CONFIDENTIAL

FLEX 000014

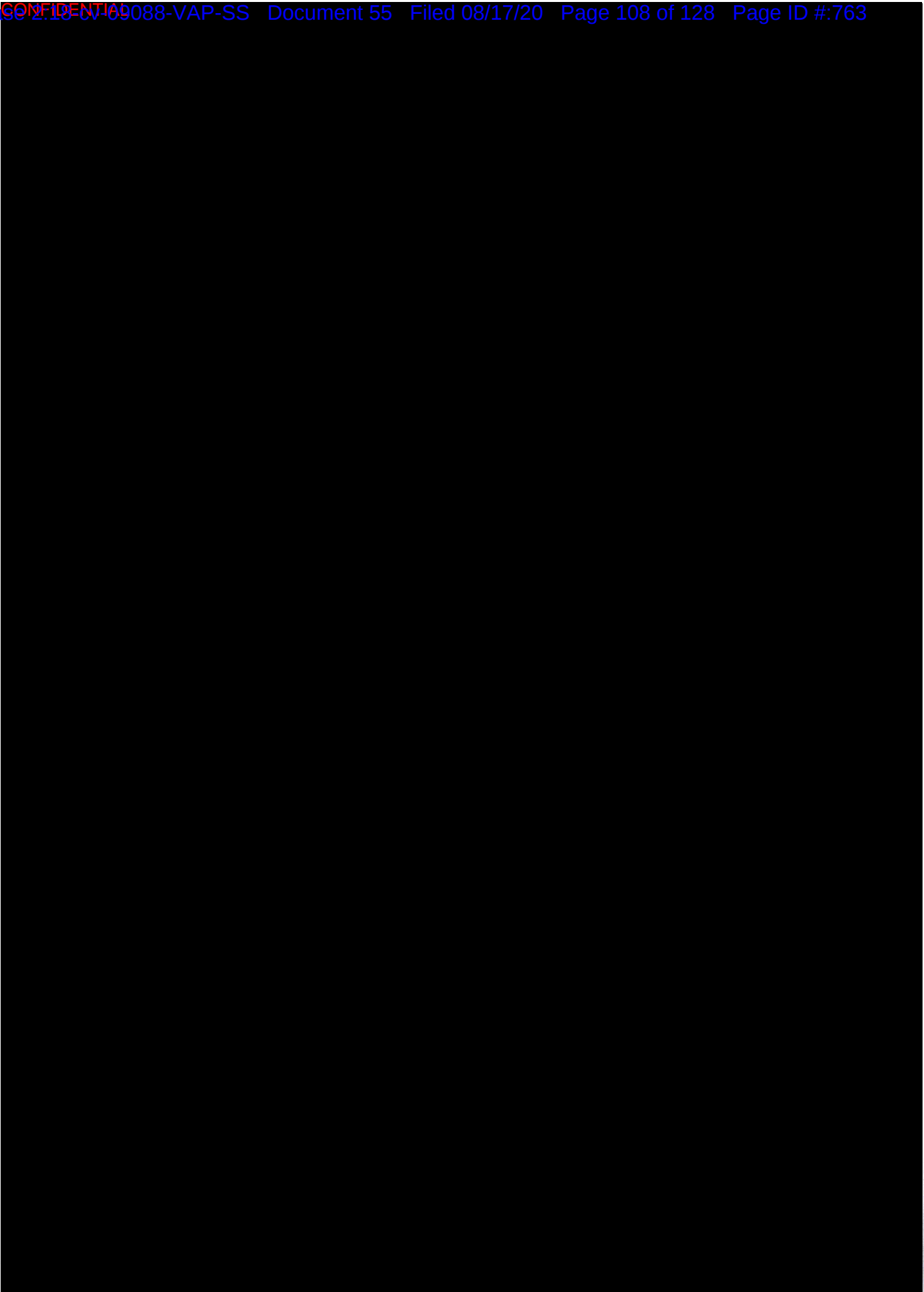


EXHIBIT G

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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 TRACY CHAPMAN,

15 Plaintiff,

16 vs.

17 ONIKA TANYA MARAJ p/k/a
18 NICKI MINAJ and DOES 1-10,

19 Defendants.

No. 2:18-cv-09088 VAP (SSx)

**STIPULATION AND
CONFIDENTIALITY AND
PROTECTIVE ORDER**

[Discovery Document: Referred to
Magistrate Judge Suzanne H. Segal].

1 Plaintiff Tracy Chapman ("Plaintiff") and Defendant Onika Tanya Maraj
 2 p/k/a Nicki Minaj ("Defendant") (collectively with Plaintiff, "Parties"), by and
 3 through their respective counsel of record, hereby stipulate and request that the
 4 Court issue a Protective Order pursuant to Fed. R. Civ. P. 26(c) to protect the
 5 confidentiality of certain documents, information, and things that may be disclosed
 6 during discovery or other proceedings in this action as follows:

7 **1. PURPOSES AND LIMITATIONS.**

8 Disclosure and discovery activity in this action are anticipated to involve the
 9 production of confidential, proprietary, or private information, including trade
 10 secrets and confidential financial information, for which special protection from
 11 disclosure to the public and from the use for any purpose other than the prosecution
 12 and defense of this litigation would be warranted. Accordingly, the Parties hereby
 13 stipulate to and petition the Court to enter the following Stipulated Protective
 14 Order. The parties acknowledge that this Order does not confer blanket protections
 15 on all disclosure or responses to discovery, and that the protection it affords extends
 16 only to the limited information or items that are entitled under the applicable legal
 17 principles to treatment as confidential. The Parties further acknowledge, as set
 18 forth in Section 12, below (FILING PROTECTED MATERIAL), that this
 19 Stipulated Protective Order does not entitle them to file confidential information
 20 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
 21 and the standards that will be applied when a party seeks permission from the court
 22 to file material under seal.

23 Good Cause Statement: This Action is likely to involve confidential
 24 intellectual property and other valuable commercial, financial, and/or proprietary
 25 information for which special protection from public disclosure and from use for
 26 any purpose other than prosecution of this action is warranted. Such confidential
 27 and proprietary materials and information consist of, among other things,
 28 confidential business or financial information, information regarding confidential

business practices, or other confidential intellectual property or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons, and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS.

2.1. Action: the above-captioned pending federal lawsuit.

2.2. Party or Parties: the above-named Parties to this litigation, all predecessors or successors thereof, all past or present divisions, business units, subsidiaries or affiliates, and any of their officers, directors, employees, and/or agents.

2.3. Non-Party or Non-Parties: any natural person, partnership, corporation, association, other legal entity, including, but not limited to, their past or present divisions, business units, subsidiaries or affiliates, and any of their officers, directors, employees, and/or agents, who are not named as a Party to this Action.

2.4. Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this Action.

3 2.5. Confidential Information: the term “Confidential Information” shall
4 refer to information (regardless of how generated, stored or maintained) or tangible
5 things that qualify for protection under standards developed under Federal Rules of
6 Civil Procedure Rule 26(c), including, but not limited to the following: trade
7 secrets; other confidential and proprietary technical, research, or development
8 information; commercial, financial, marketing, budgeting and/or accounting
9 information; information about existing and potential customers or clients,
10 marketing studies, performance, and projections; business strategies, decisions
11 and/or negotiations; personnel compensation, evaluations and other employment
12 information; personal information; confidential information about the musical
13 compositions and/or sound recordings at issue in this action; confidential and
14 proprietary information about affiliates, parents, subsidiaries and/or
15 individuals/entities with whom the Parties to this action have or have had business
16 relationships; and other information, including, but not limited to certain
17 confidential contracts and/or agreements, the disclosure of which would be
18 detrimental to that Party and/or the conduct of that Party’s business or the business
19 of that Party’s customers or clients.

20 2.6. Confidential Information – Attorneys’ Eyes Only: the term
21 “Confidential Information – Attorneys’ Eyes Only” shall refer to Confidential
22 Information for which there is a reasonable and good faith basis to believe that such
23 information, if disclosed to a Party, would be likely to cause actual and material
24 harm to the designating party, including, but not limited to, disclosure of trade
25 secrets or other highly sensitive, non-public information. “Confidential
26 Information – Attorneys’ Eyes Only” is included within the meaning of
27 “Confidential Information” as used in this Order, and all provisions of this Order
28 that apply to “Confidential Information” also shall apply to “Confidential

Information – Attorneys’ Eyes Only”, with such additional protections that are expressly afforded to “Confidential Information – Attorneys’ Eyes Only”.

2.7. Producing Party and Designating Party: the Party (and its Counsel) that is supplying information to any other Party or any non-party that is supplying information to any Party.

2.8. Receiving Party and Non-Designating Party: the Party (and its Counsel) who is receiving information from any other Party or non-party.

2.9. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, and who is not a past or a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this Action.

2.10. Counsel: the lawyers of record for each of the Parties in this Action.

2.11. Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstratives; organizing; storing; retrieving data in any form or medium), and their employees and subcontractors.

2.12. Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” pursuant to this Stipulated Protective Order.

3. SCOPE.

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also any information copied, derived, or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material. The protections

1 conferred by this Stipulated Protective Order do not cover the following
2 information: (a) any information that is in the public domain at the time of
3 disclosure to a Receiving Party or becomes part of the public domain after its
4 disclosure to a Receiving Party as a result of publication not involving a violation
5 of this Order, including becoming part of the public record through trial or
6 otherwise; and (b) any information known to the Receiving Party prior to the
7 disclosure or obtained by the Receiving Party after the disclosure from a source
8 who obtained the information lawfully and under no obligation of confidentiality to
9 the Designating Party.

10 Any use of Protected Material at trial shall be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12 **4. DURATION.**

13 Even after final disposition of this Action, the confidentiality obligations
14 imposed by this Stipulated Protective Order shall remain in effect until a
15 Designating Party agrees otherwise in writing or a court order otherwise directs.
16 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
17 defenses in this Action, with or without prejudice; and (2) final judgment herein
18 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
19 reviews of this Action, including the time limits for filing any motions or
20 applications for extension of time pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL.**

22 **5.1 Exercise of Restraint and Care in Designating Materials for Protection.**

23 Each Party or non-party that designates information or items for protection
24 under this Order must take care to limit any such designation to specific material
25 that qualifies under the appropriate standards. A Designating Party must take care
26 to designate for protection only those parts of material, documents, items, or oral or
27 written communications that qualify – so that other portions of the material,
28 documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, routinized designations are prohibited. Designations
3 that are shown to be clearly unjustified, or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber or retard the case development process, or
5 to impose unnecessary expenses and burdens on other parties), will expose the
6 Designating Party to sanctions.

7 If it comes to a Party's or a Non-Party's attention that information or items
8 that it designated for protection do not qualify for protection at all, then that Party
9 or Non-Party must promptly notify all other parties that it is withdrawing the
10 mistaken designation.

11 5.2 Manner and Timing of Designations. It shall be the duty of the
12 Designating Party seeking protection of Protected Material to indicate to the other
13 Party and its Counsel which materials are to be considered "Confidential
14 Information" or "Confidential Information – Attorneys' Eyes Only". Upon the
15 entry of this Stipulated Protective Order, all documents produced in this proceeding
16 that the Producing Party reasonably believes contain "Confidential Information" or
17 "Confidential Information – Attorneys' Eyes Only" may be designated as
18 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY",
19 respectively. In addition, all portions of pleadings, answers to interrogatories,
20 answers to requests for admissions, responses to requests for production of
21 documents, expert reports, declarations, and deposition testimony and deposition
22 exhibits that rely upon or reference documents and/or information designated as
23 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY"
24 pursuant to this Stipulated Protective Order shall be subject to this Order as set
25 forth below.

26 (a) Designation of Protected Material in conformity with this
27 Stipulated Protective Order requires:

28 (i) For documents and things, at the time of their production.

1 However, in the event a Producing Party elects to produce documents and things for
 2 inspection, no designation need be made prior to the inspection for “Confidential
 3 Information”. For purposes of inspection, all documents shall be considered
 4 “CONFIDENTIAL” unless otherwise previously designated as “CONFIDENTIAL
 5 – ATTORNEYS’ EYES ONLY”. Upon a request for copying, the Producing Party
 6 shall designate such documents and things as “CONFIDENTIAL” or
 7 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the provisions of
 8 this Protective Order;

9 (ii) For answers to interrogatories, answers to requests for
 10 admissions, responses to requests for production of documents, and expert reports,
 11 at the time they are provided to the other Parties;

12 (iii) For declarations and pleadings, at the time of their filing;
 13 and

14 (iv) For deposition testimony and/or deposition exhibits, at the
 15 time of the testimony or within thirty (30) business days after the Designating Party
 16 receives the transcript of the deposition. Until such time period expires, the
 17 deposition testimony and/or deposition exhibits shall be treated as “Confidential
 18 Information” unless otherwise specified in writing or on the record of the
 19 deposition.

20 (b) The designation of “Confidential Information” and
 21 “Confidential Information – Attorneys’ Eyes Only” shall be made in the following
 22 manner:

23 (i) For documents produced in response to a discovery
 24 request, by placing a legend of “CONFIDENTIAL” or “CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY” on each page of such documents, or, if not
 26 practicable or if doing so might damage the document, image or other things, as
 27 otherwise agreed by the Parties and/or Non-Party;

28 (ii) For tangible objects, by placing a label or tag with a

1 legend of “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
 2 ONLY” on the object or the container for the object, or if not practicable, as
 3 otherwise agreed by the Parties and/or non-party;

4 (iii) For answers to interrogatories, answers to requests for
 5 admissions, responses to requests for production of documents, expert reports and
 6 declarations, by placing a legend of “CONFIDENTIAL” or “CONFIDENTIAL –
 7 ATTORNEYS’ EYES ONLY” on the face of such responses, declarations or
 8 reports;

9 (iv) For pleadings, by placing a legend of “CONFIDENTIAL”
 10 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the face of such
 11 pleading; and

12 (v) For deposition testimony and/or exhibits, following
 13 designation pursuant to paragraph 5.2(a)(iv) above, all copies of deposition
 14 transcripts that contain information or material designated as “Confidential
 15 Information” or “Confidential Information – Attorneys’ Eyes Only” shall include
 16 the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
 17 ONLY” on the cover thereof. All labels, legends and tags, as above stated, shall be
 18 in a place or manner that avoids any interference with the legibility of the material.

19 5.3 Inadvertent Failures to Designate. If corrected within a reasonable
 20 time, a Producing Party does not waive the right to designate material as
 21 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by
 22 inadvertently failing to designate it as such before producing the same to the
 23 Receiving Party. After being notified of the inadvertent failure, the Receiving Party
 24 must take reasonable steps to retrieve the information if the party disclosed it before
 25 being notified, and to have any person who received the material sign the
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and must make
 27 reasonable efforts to assure that the material is treated in accordance with the
 28 provisions of this Order.

1 5.4 Right to Re-Designate. A Designating Party retains the right
2 subsequently to re-designate materials and to require such documents to be treated
3 in accordance with such designations from that time forward by providing written
4 notice to all other Parties.

5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

6 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
7 Party's confidentiality designation is necessary to avoid foreseeable substantial
8 unfairness, unnecessary economic burdens, or a later significant disruption or delay
9 of the litigation, a party does not waive its right to challenge a confidentiality
10 designation by electing not to mount a challenge promptly after the original
11 designation is disclosed. Accordingly, any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court's
13 Scheduling Order.

14 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
15 Designating Party's confidentiality designation must do so in good faith and must
16 begin the process by conferring directly (as required by Local Civil Rule 37-1),
17 with counsel for the Designating Party. In conferring, the challenging Party must
18 explain the basis for its belief that the confidentiality designation was not proper
19 and must give the Designating Party an opportunity to review the designated
20 material, to reconsider the circumstances, and, if no change in designation is offered,
21 to explain the basis for the chosen designation.

22 6.3 Judicial Intervention. The burden of persuasion in any challenge
23 proceeding shall be on the Designating Party. Until the Court rules on the
24 challenge, all parties shall continue to afford the material in question the level of
25 protection to which it is entitled under the Producing Party's designation. Frivolous
26 challenges, and those made for an improper purpose (e.g., to harass or impose
27 unnecessary expenses and burdens on other parties) may expose the challenging
28 party to sanctions.

7. ACCESS TO AND USE OF PROTECTED MATERIAL.

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to categories of persons and under the conditions described in this Stipulated Protective Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 13, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party’s Counsel of record in this Action, as well as employees of said Counsel (including, without limitation, any paralegal, clerical, or other assistant that such attorneys hire and assign to this matter) to whom it is reasonably necessary to disclose the information for this litigation, and all of whom are bound by the provisions of this Stipulated Protective Order;

(b) the current and former officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) professional jury or trial consultants and mock jurors, to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties engaged in settlement discussions.

7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may only disclose any information or item designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY to:

(a) the Receiving Party’s Counsel of record in this Action, as well as employees of said Counsel (including, without limitation, any paralegal, clerical, or other assistant that such attorneys hire and assign to this matter) to whom it is reasonably necessary to disclose the information for this litigation, and all of whom are bound by the provisions of this Stipulated Protective Order;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) the Court and its personnel;

3 (d) court reporters, their staffs, and Professional Vendors to whom
4 disclosure is reasonably necessary for this litigation and who have signed the

5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (e) professional jury or trial consultants and mock jurors, to whom
7 disclosure is reasonably necessary for this Action and who have signed the

8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom
10 disclosure is reasonably necessary. Pages of transcribed deposition testimony or
11 exhibits to depositions that reveal Protected Material must be separately bound by
12 the court reporter and may not be disclosed to anyone except as permitted under
13 this Stipulated Protective Order;

14 (g) the author or recipient of a document containing the information
15 or a custodian or other person who otherwise possessed or knew the information;
16 and

17 (h) any mediator or settlement officer, and their supporting
18 personnel, mutually agreed upon by any of the Parties engaged in settlement
19 discussions.

20 **8. PROTECTED MATERIAL SUBPOENAED OR**
21 **ORDERED PRODUCED IN OTHER LITIGATION.**

22 If a Party is served with a subpoena or an order issued in other litigation that
23 would compel disclosure of any information or items designated in this action as
24 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, the
25 Receiving Party must:

26 (a) promptly notify the Designating Party, in writing (by electronic
27 mail, if possible) immediately and in no event more than three court days after
28

receiving the subpoena or order. Such notification must include a copy of the subpoena or court order;

(b) promptly notify the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Stipulated Protective Order, and deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulated Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL
SOUGHT TO BE PRODUCED IN THIS LITIGATION.**

(a) The terms of this Stipulated Protective Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Stipulated Protective Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is

subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(i) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(ii) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(iii) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this Court within 14 calendar days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached here as Exhibit A.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED**
 2 **OR OTHERWISE PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
 4 inadvertently produced material is subject to a claim of privilege or other
 5 protection, the obligations of the Receiving Parties are those set forth in Federal
 6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 7 whatever procedure may be established in an e-discovery order that provides for
 8 production without prior privilege review. Pursuant to Federal Rule of Evidence
 9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
 10 of a communication or information covered by the attorney-client privilege or work
 11 product protection, the parties may incorporate their agreement in the stipulated
 12 protective order submitted to the Court.

13 **12. FILING PROTECTED MATERIAL.**

14 Without written permission from the Designating Party or a court order
 15 secured after appropriate notice to all interested persons, a Party may not file in the
 16 public record in this action any Protected Material. A Party that seeks to file under
 17 seal any Protected Material must comply with Local Civil Rule 79-5.

18 **13. FINAL DISPOSITION.**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within
 20 60 days after the final termination of this action, each Receiving Party must either
 21 return all Protected Material to the Producing Party, or destroy all such Protected
 22 Material. As used in this subdivision, "all Protected Material" includes all copies,
 23 abstracts, compilations, summaries or any other form of reproducing or capturing
 24 any of the Protected Material. Whether the Protected Material is returned or
 25 destroyed, the Receiving Party must submit a written certification to the Producing
 26 Party (and, if not the same person or entity, to the Designating Party) by the 60-day
 27 deadline that identifies (by category, where appropriate) all the Protected Material
 28 that was returned or destroyed and that affirms that the Receiving Party has not

retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Materials remain subject to this Protective Order as set forth in Section 4, above (DURATION).

14. MISCELLANEOUS.

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 This Stipulated Protective Order shall survive the final conclusion of the Action, and the Court shall have jurisdiction to enforce this Stipulated Protective Order beyond the conclusion of this Action.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

Dated: July 9, 2019

BROWNE GEORGE ROSS LLP

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Peter W. Ross

By: /s/ Robert A. Jacobs

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13 **LOCAL CIVIL RULE 5-4.3.4(a)(2)(i) CERTIFICATION**

14 The filer of this document attests that all other signatories listed above on
15 whose behalf this filing is submitted concur in the filing's content and have
16 authorized the filing.

17 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

18 /S/
19 Hon. Suzanne H. Segal
20 United States District Court Magistrate Judge

21 Date: 7/10/19

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____ [date] in the case of *Chapman v. Maraj*, Case No. 2:18-cv-09088-VAP -
SS. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____